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Current Topics.

Birthday Honours.

THIS year the Birthday Honours List has been received too late for the inclusion in the present issue of a more exhaustive analysis of those members of the legal profession whose services in various spheres have been marked by the bestowal of some honour. Readers will, however, welcome the announcement that the services of The Law Society have again been recognised by the conferring of the honour of Knight Bachelor upon Mr. WILLIAM WAYMOUTH GIBSON, this year's President of the Council.

The Legal Terms.

THE name officially given to the term which commenced this week, and which, for many centuries, has been known as Trinity Term, is a reminder of the ecclesiastical origin of the divisions of the legal year. In early times we read that the King wore his crown and presided over the Great Council three times in the year, and from this, it is said by some of the older writers on the subject, we derive the terms, originally three in number, although on this, as on so many other topics connected with legal administration, all writers are not agreed. During the reign of HENRY II we read that the terms were four in number with the names under which we know them to-day, although their commencement has varied from time to time. According to an acute French commentator on our legal system, the terms since the Judicature Act, 1873, have served only to indicate the space of time between the legal vacations, which, he proceeds to add with a touch of humour, the judges find scarcely sufficient, but which the practitioners, not without reason, consider much too long. On this subject the only judicial pronouncement, so far as we are aware, was that of the late LORD SUMNER, who, with that genius for caustic utterance which he possessed in a superlative degree, said that long cessations from work were essential in order to give the judges the necessary mental relief from the perpetual contemplation of human nature not always at its best.

Trinity Law Sittings.

THE lists for the Trinity Law Sittings contain a total of 3,501 causes, or 981 more than those of the corresponding term last year. There are 170 appeals to the Court of Appeal, of which five are interlocutory. Of the final appeals sixteen are from Chancery, ninety-six are from the King's Bench, nine are from the Probate, Divorce and Admiralty Division, and forty-four from the county courts. The last two figures respectively include three Admiralty appeals and eight workmen's compensation cases. The total for the Chancery Division is 183, or seventy-nine more than for last year. The Witness List, containing 136 actions, will be dealt with by BENNETT and SIMONDS, JJ. The seventeen matters in the Adjourned Summonses and Non-Witness List will be taken by CROSSMAN and MORTON, J. FARWELL, J., has five retained matters. In addition BENNETT and CROSSMAN, JJ., each have four retained matters, and SIMONDS and MORTON, JJ., have respectively seven and ten retained matters. There are four motions in bankruptcy. Companies matters, numbering sixty-six, will be dealt with by CROSSMAN, J. During the term MORTON, J., will sit as Appeal Tribunal under the Patents and Designs Acts, 1907 to 1938. Causes in the King's Bench Division, which have increased in number compared with last year from 1,030 to 1,160, include 190 special jury, 188 common jury, 158 long non-jury, and 571 short non-jury actions. There are forty-two cases in the Commercial List and eleven actions have been set down for hearing under Ord. XIV. The total for the Divisional Court is sixty-eight, or three more than last year. The lists include twenty-six causes in the Revenue Paper, ten in the Special Paper, six appeals under the Housing Acts, 1925 to 1936, and one each under the Public Works Facilities Act, 1930, and the National Insurance Act, 1936. In the Probate, Divorce and Admiralty Division there are four Admiralty actions and 2,016 divorce causes. The last figure includes 990 undefended and 972 defended causes, and also six special jury and forty-eight common jury actions. The Judicial Committee of the Privy Council resumed its sittings on Thursday, with a list of twenty-five appeals as compared with thirty last year. Eleven of the appeals in the present list are from India, seven are from Canada, and four from West Africa. The total above indicated is completed by one appeal from Gibraltar, one from Palestine and one from Johore. Six judgments await delivery.

A Ministry of Supply.

In announcing in the House of Commons some weeks ago the Government's decision to set up a Ministry of Supply, the Prime Minister stated that the Bill to be introduced to give effect to this decision would be so framed as to enable a Ministry of Supply in the full sense to be set up. But it was intimated that, for the time being, the scope of the new Ministry would be confined by administrative action in connection with the problems of army supply, and the Ministry would take over responsibility for certain stores of general use which the War Office at present supplied to other Government Departments, including certain civil defence requirements—that system would be progressively extended as found desirable—and would also take on the responsibility for the acquisition and maintenance of the reserves of essential metals and other raw materials required in connection with the defence programmes. The scope of the powers to be transferred is indicated in a recently issued White Paper (Cmd. 6034, H.M. Stationery Office, price 1d. net). The transfer of powers from other Government Departments is to be effected by Orders in Council, subject to confirmation by Parliament, and the White Paper sets out the powers it is proposed to transfer initially as soon as the Ministry of Supply Bill becomes law.

Transfer of Powers.

The Bill referred to in the preceding paragraph makes provision for permanent and temporary powers, and the former, with which the White Paper is alone concerned, would authorise the Minister of Supply to purchase or otherwise acquire, manufacture, store and transport any articles required for the public service, and to dispose of any articles acquired. It is proposed to transfer to the new Minister all the powers of the War Office with regard to supplies for the military forces of the Crown, except in relation to the supply of food and forage, fuel and light, petrol, lubricants and medical stores; and all the functions of the War Office with regard to research, design and inspection of munitions of war, and all experimental work in connection therewith, with the appropriate establishments. The Royal Ordnance Factories and other manufacturing establishments, concerned with the stores transferred, are to become the responsibility of the new Minister. Certain functions, now carried out on an agency basis by the War Office for the Admiralty, Air Ministry and civil departments are also to be transferred to the Minister, who, it is further proposed, shall take over from the Board of Trade the powers and duties of that department under the Essential Commodities Reserves Act, 1938, with regard to the acquisition and maintenance of reserves of fertilizers for land and raw materials from which fertilizers can be produced. The Orders in Council are to contain consequential provisions conferring upon the Minister the powers relating to the acquisition of land now possessed by the Service departments; and statutory provisions (set out in a schedule to the measure) relating to the protection of government factories, etc., which now apply to the Service departments, are to be applied to the Minister or the property from time to time under his control.

The Access to Mountains Bill.

Several amendments, moved by the Earl of Radnor, were introduced into the Access to Mountains Bill on Tuesday, when that measure was being considered by the House of Lords in Committee. One makes it clear that the public will not be allowed to enter land which has been made accessible where the land has been fenced, and prevents the owner of accessible land rendering the land inaccessible by fencing it all round. Another deletes the reference to ancient monuments in regard to which provision is made under existing statutes—namely, the Ancient Monuments Acts of 1913 and 1931. A third amendment is designed to safeguard the position with regard to land to which the public has enjoyed access hitherto, fears having been expressed in the House of Commons that in making orders under the new measure such access might be curtailed. The effect of a fourth amendment, it was explained, would be that where access land was closed to the public for any particular reason, simple trespass, within such times, would not be an offence under the Bill, but the individual who did trespass would be liable to be excluded under the law of trespass. A penal provision in the Bill, it was said, had aroused opposition among organised ramblers, who claimed that it was a material alteration of the law of trespass and opposed the Bill as a whole on that small point. This amendment only dealt with the question of simple trespass without damage and did not affect various other sanctions under the Bill. A fifth amendment is to the effect that the rules of law relating to injury sustained by trespassers shall have effect in relation to persons injured on land to which access is obtained in consequence of the measure, subject to a proviso the object of which is to ensure that no landowner shall take such action as would frighten people from going on to the land. The purpose of this amendment was to make it clear that a landowner would not be liable to any greater extent through the operation of the Bill than he now is. Lord Maugham, K.C., doubted whether the amendment was well worded and suggested that it might be altered so as to provide that the landowner's liability should not be greater than it would have been if the Order of the Minister had not been made, and the Earl of Radnor thereupon indicated that he would further consider the matter and obtain advice with a view to seeing whether the amendment could be improved at the next stage of the Bill. The committee stage was then concluded and the Bill as amended was reported to the House.

House Purchase by Instalments.

A recent writer to *The Times* put forward with reference to the powers and responsibilities of building societies, now the subject matter of pending legislation, a point of view which, he said, he had not yet seen expressed. The writer thought that it could be taken for granted that the greater proportion of small house purchasers who make use of the facilities provided by building societies are unaware of the various costs which have to be met before a property can be transferred. He intimated that the legal and survey costs on a £700 house might amount to a sum of money which would provide "those two basins with hot and cold water in two bedrooms which, when discussing the price with the vendor, the purchaser cannot afford." Consequently the idea of having an independent survey is instantly dismissed, if, indeed, it is ever entertained. In other transactions, the writer goes on, the purchaser is presumed to have sufficient sense to know or obtain expert advice on whether the object he proposes to purchase is worth what he intends to give for it. In the case of building society house purchase, the vendor displays his goods, the purchaser wants to buy, and, as he has not enough money, turns to someone who will lend him the difference between what he has and what he wants. A mortgagee by lending money does not guarantee the soundness of the security, and the fact that a large proportion of building societies finance building operations does not alter individual responsibility. "The system of 'a small deposit and the balance by instalments,' has created," the writer states, "a class of 'near owners' who lack the balance and restraint which inevitably comes with the handling of capital in however small amounts. A better and simpler way of dealing with the house-purchase problem would be for building societies to be compelled to issue a notice telling prospective purchasers they must satisfy themselves that the goods are worth the money they are paying for them," though "even this seems a concession to the suggestion that

a house buyer is therefore a half-wit." Recent publicity, it is urged, has placed the whole question of house purchase on a completely unreal basis, and it would be a disaster if, to satisfy those who do not wish to take responsibility for their actions, the public should have the "thin edge of irresponsibility forced upon them by law." In general the position maintained in the foregoing letter may well commend itself to readers. Indeed, we ourselves have commented on the falsity of the notion that a mortgagee should be regarded as guaranteeing the adequacy of the security. It may, however, be recalled that the maxim "*caveat emptor*" has been considerably restricted in its scope by statutory warranty in the case of the sale of large classes of goods and that the entire absence of any such warranty in the case of a house places the purchase of such upon a somewhat unusual footing.

Housing and Planning Progress.

MR. WALTER ELLIOT, the Minister of Health, speaking at the recently held annual meeting of the Council for the Preservation of Rural England, made reference to progress which has been made in housing and planning in regard to the well-being of the countryside. In the Housing (Financial Provisions) Act, 1938, he said, the Exchequer subsidy had been fixed at a high level in order to secure houses which could be let to agricultural workers at low rents without imposing undue burden on the local rates, and 2,000 houses were already being built under the Act. It was also indicated that increasing advantage is being taken of the facilities afforded by the Housing (Rural Workers) Acts for the reconditioning of old cottages. In the six months ended 30th September, 1935, applications had been made for assistance for 1,315 dwellings. In the corresponding six months of last year, 3,010 applications had been received, and assistance had been given to the extent of nearly £170,000. In regard to planning, the speaker urged that the workshop of the agricultural industry should be planned for economical and efficient running. For some time there had been difficulty in finding an adequate technique for controlling rural areas in such a way as to allow freedom for all agricultural and similar operations that were natural to them, but to exclude haphazard building which had no real connection with or purpose in the locality. The question had recently been considered by the Town and Country Planning Advisory Committee of the Ministry, and after considering their report, he had issued a circular on the control of premature or unsightly development in the countryside and sea coast, which he believed would do a great deal to solve the problem, particularly by the introduction of the new "rural zone," providing at once for the needs of rural industry and for the preservation of the country against haphazard building. The Minister emphasised the importance of houses and other buildings in rural localities being designed to harmonise with the surrounding landscape.

Rules and Orders: Coal (Registration of Ownership).

THE Coal (Registration of Ownership) Rules, 1939, which were made on 22nd May by the Board of Trade under powers conferred by the Coal (Registration of Ownership) Act, 1937, provide that, where "barrier coal" is excepted and reserved out of the coal and coal mines comprised in a coal-mining lease derived out of the fee simple, the following interests shall be treated as constituting one separate unit of ownership: "(*a*) In the case of all the coal and mines of coal that are comprised in that coal mining lease and in the case of property and rights held in association with such coal or mine the interest therein of the estate owner in respect of the fee simple in the coal and mines together with the interests therein of all persons claiming under him, and (*b*) in the case of the barrier coal and in the case of property and rights held in association with such barrier coal the interest therein of the estate owner in respect of the fee simple in the barrier coal together with the interests therein of all persons claiming under him." Where the estate owner in respect of the fee simple of barrier coal is also the estate owner in respect of the fee simple of other coal and coal mines in any coal mining lease, the following are to be treated (without prejudice to any power conferred by rules made by the Board of Trade under the Act) as constituting one separate unit of ownership: "In the case of all the coal and mines of coal other than barrier coal that are not comprised in any coal mining lease and are in the legal ownership as respects the fee simple of the same estate owner and in the case of property and rights held in association with any such coal or mine the interest therein of the estate owner in respect of the fee simple in the coal and mines together with the interests therein of all persons claiming under him." The rules define "barrier coal" as "coal and mines of coal (1) excepted and reserved for barriers pillars or support out of the coal and mines of coal comprised in a coal mining lease derived immediately out of the fee simple; (2) in the legal ownership as respects the fee simple of the estate owner of the coal and mines of coal comprised in that coal mining lease; and (3) not comprised in any other coal mining lease." In the case of a holding constituted by virtue of these rules the period mentioned in para. 5 (3) (*a*) of the 2nd Sched. to the Act is extended so as to cease on 1st June, 1939. The rules (S.R. & O., 1939, No. 576) are published by H.M. Stationery Office, price 1d. net.

National Health Insurance: Minister's Decisions.

SUPPLEMENT No. XV to the Volume of Memoranda of Decisions (Memo. 151, September, 1931), given by the Minister of Health as to liability to insurance under the National Health Insurance Acts, has recently been published by H.M. Stationery Office (price 1d. net). One of the decisions relates to trawler skippers who were paid a weekly wage and entitled to a share in the net earnings of the vessel, the combined amounts exceeding £250 a year. The vessels were engaged in trawling voyages of eight or nine days' duration and carried eight persons. The skippers' duties included the supervision of the ship for sea, taking charge of the vessels to and from the fishing grounds, the direction of the fishing, and the supervision of the unloading of the catch. When circumstances permitted the skippers took part in the actual work of getting in the nets, etc.; and, though not obliged to do so, would spend some time during the voyages in repairing the nets. The Minister decided that the employment was not by way of manual labour and, as such, insurable irrespective of the rate of remuneration. Another decision of some interest relates to a master carpenter employed at a London theatre at a rate of remuneration exceeding £250 a year. He worked under the direction of the stage manager and was responsible for the setting and working of stage scenery and for maintenance work in connection with the building, furniture and fixtures. He was required personally to perform carpentry work for the stage and auditorium, and during the performances his duties were to supervise a staff of scene shifters. This employment, it was decided, was employment by way of manual labour, and hence employment within the meaning of the Act, irrespective of the rate of remuneration. A third decision concerned one employed by a railway company at Smithfield Central Market. The man was one of a gang of four working under the directions of a checker, a weekly servant of the said company and himself under the supervision of a foreman employed on similar terms. If, for some reason, the man was unable to attend, a substitute would not have been accepted. Each member of the gang was paid daily by the foreman. It was decided that the man was employed under a contract of service within the meaning of the Act. Other decisions relate to a preacher in charge (Presbyterian Church of England), and undertakers' wives who performed certain duties in the absence of their husbands. In both these cases it was decided that the persons concerned were not employed under a contract of service within the meaning of the Act.

Recent Decisions and the Rule in *Russell* v. *Russell*.

THE rule that neither husband nor wife is permitted to give evidence of non-intercourse after marriage to bastardize a child born in wedlock is one of the most important rules in matrimonial causes and is constantly arising. It is commonly called the rule in *Russell* v. *Russell*, though its origin is much earlier. During the fifteen years which have elapsed since the decision in that case there have been many cases turning on the question of " non-access," and at least ten have found their way into the law reports. In *Russell* v. *Russell* [1924] A.C. 687, the House of Lords followed and applied the principles laid down in *Goodright* v. *Moss* (1777), 2 Cowp. 591, and quoted with approval these words of Lord Mansfield: " The law of England is clear, that the declaration of the father or mother cannot be admitted to bastardize the issue born after marriage. It is a rule founded in decency, morality, and policy, that they shall not be permitted to say after marriage that they have had no connection, and that therefore the offspring is spurious." This rule has been discussed many times and has been distinguished in *Warren* v. *Warren*, where Swift, J., laid down a principle which minimised to a large extent the hardship which might have flowed from an application of *Russell* v. *Russell*.

The position first came up for review in *Andrews* v. *Andrews* [1924] P. 255, where it was decided that where a husband and wife were living apart under a separation order containing the usual clause that the wife should not be bound to cohabit with her husband, and a child were born which must have been conceived during the existence of such an order, the rule in *Russell* v. *Russell* did not apply. The position was carried a stage further in *Mart* v. *Mart* [1926] P. 24, where it was laid down that a deed of separation had the same effect as an order under the Summary Jurisdiction (Married Women) Act, 1898, as was the case in *Andrews* v. *Andrews* as far as related to the legal presumption of access. Bateson, J., said, in that case, " A decree of separation separates the two parties by their own agreement instead of by the order of the court. It has been decided (in *Hetherington* v. *Hetherington* (1887), 12 P. 112) that where there has been a judicial separation it is presumed, in the absence of evidence to the contrary, that there has not been access between the parties after the date of the decree, and that, therefore, where a child is born more than nine months after the date of the decree the presumption of legitimacy does not arise. I think that a deed of separation has the same effect." On the general question of non-access he said: " The law as I understand it is this. If there is a child conceived and born after the marriage a denial by the husband or wife of intercourse during the marriage is not allowed. That seems to be the effect of *Russell* v. *Russell*. A denial by the husband or wife of intercourse before marriage as to a child born after is admissible (see *The Poulett Peerage Case* [1903] A.C. 395). It is also admissible after a judicial separation or a separation order (see *Hetherington* v. *Hetherington*, and *Andrews* v. *Andrews*)."

It is true that Luxmoore, J., in *Re Bromage; Public Trustee* v. *Cuthbert* [1935] Ch. 605, declined to follow *Mart* v. *Mart*, but in *Stafford* v. *Kidd* [1937] 1 K.B. 395, a Divisional Court, consisting of Lord Hewart, C.J., Swift and Macnaghten, JJ., did follow *Mart* v. *Mart*. Two years later, in *Ettenfield* v. *Ettenfield* (p. 459 of this issue), Langton, J., had to consider a case where the agreement to live apart was " not enshrined in a deed of separation," but was set out in correspondence between solicitors acting for the two parties. Langton, J., had already decided in *Collis* v. *Collis & Thomas* (1933), 77 SOL. J. 573, that in order to raise a point concerning non-access under an oral agreement, it would be necessary that the agreement should be established beyond doubt and question and that it confirmed " a settled relationship completely different from that of the customary marital cohabitation." The learned judge then discussed the rule in *Russell* v. *Russell*, with its avowed object of respecting the sanctity of married intercourse. He pointed out that where the parties were living apart under judicial separation (as in *Hetherington* v. *Hetherington*) or under a magistrates' separation order (as in *Andrews* v. *Andrews*) the sanctity of the conjugal relation had already been invaded if not abolished, by judicial intervention. " Upon the same lines," Langton, J., continued, " an exception in cases in which a separation agreement has been arrived at can be justified on the ground that no very special sanctity can be claimed for a conjugal relation which the parties have agreed temporarily to renounce, so far as it lies in their power to do so. I find it difficult to perceive in what way an agreement such as the present one differs in principle from an agreement embodied in a deed." The judge then went considerably further and expressed the view that the rule in *Russell* v. *Russell* ought to apply only where the parties are in fact cohabiting (in the broad sense of the term) or where they must be taken by presumption of law, and in the absence of evidence to the contrary, to be so cohabiting. This latter view is only *obiter dicta*, but there can be little doubt that it would be applied in a case where the facts fitted.

Until *Farnham* v. *Farnham* [1937] P. 49; 81 SOL. J. 60, there was no reported case of the application of the rule in *Russell* v. *Russell* to a nullity suit. In that case the marriage had never been consummated by reason of the wife being *frigida quad hunc* and the wife had given birth to a child two years after leaving her husband and had confessed intercourse with another man to whom she ascribed paternity.

It was held that *Russell* v. *Russell* did not render the evidence inadmissible. Langton, J., said that it would be a great injustice to take from a petitioner his elementary right of proving that his wife was never able to consummate the marriage with him just because she had given birth to an illegitimate child. He pointed out especially that the evidence sought to be tendered in *Russell* v. *Russell* went directly to bastardize the child, and was the only evidence of adultery. To that extent therefore the rule in *Russell* v. *Russell* stands unimpaired. In *Farnham* v. *Farnham* the suit was a suit for nullity and not for divorce. The issue of adultery was not an issue in the case at all.

It frequently happens in a divorce case that the principal evidence, and sometimes the only evidence of adultery which the husband can adduce is an admission of the wife, coupled with her belief that he is not the father of a child born to her. At first sight it would appear that such a statement was inadmissible in view of the rule in *Russell* v. *Russell*, but Swift, J., in *Warren* v. *Warren*, and recently the President in *Roast* v. *Roast*, have drawn an important distinction from the House of Lords' decision. The headnote of *Warren* v. *Warren* [1925] P. 107 reads, " A wife's admission that she had committed adultery, even if accompanied by a statement of her belief that a child subsequently born was the result of the adultery, cannot bastardize the child without evidence of the non-access of the husband. The confession of the wife, therefore, that she has committed adultery is admissible as evidence in a suit for divorce so long as she does not assert that the husband could have had no access at the time of conception." In *Roast* v. *Roast* [1938] P. 8; 81 SOL. J. 965, the wife was claiming maintenance from her husband on the ground of desertion and the issue was whether he had just cause for leaving her. The President held that a statement by the wife, although amounting to a doubt with reference to the paternity of her child, was not an attempt by her to bastardize the child so as to be inadmissible in evidence under the rule in *Russell* v. *Russell*, but was an admission that at the time when the child must have been conceived a man other than her husband had had intercourse with her, and was therefore admissible as evidence that the husband had reasonable grounds for leaving her. The President,

Sir Boyd Merriman, gave a very lucid statement of the position by saying that, "It is quite plain since the decision in *Russell* v. *Russell* that a husband cannot prove the adultery of his wife at a time at any rate when they were nominally living together, or to put it the other way, when they were not living apart, either under a formal agreement or under an order of the court, by saying that at the time of possible conception he did not, in fact, have sexual intercourse with his wife . . ." The *Roast* v. *Roast* line of case however takes the position still further. Whilst neither spouse may give evidence which will bastardize issue, the restriction is confined to the wife and her husband. The President illustrated this in *Roast* v. *Roast* when he said that if a husband sought to say that he was serving in Singapore at the time when the child must have been conceived he could not be heard to say it. But if someone came from the Admiralty to say that the husband was in Singapore at the time, the case could be decided on the evidence of the officer sent for that purpose. That case would depend not on the evidence of adultery with any man, but on the simple fact that a child was born on a certain date and that the husband could not have been the father because it was not possible that he could have had intercourse with his wife at the relevant date.

It will be seen therefore that the inadmissibility of the evidence of a husband or wife decided by *Goodright* v. *Moss* and *Russell* v. *Russell* still remains, subject to the qualification placed on it by *Warren* v. *Warren*, and to the very far-reaching qualifications laid down in *Ettenfield* v. *Ettenfield*.

Company Law and Practice.

Additional Directors.

It is nowadays practically common form for articles to give the directors a power to appoint additional directors. Clause 79 of Table A provides for this in these words :—

> "The directors shall have power at any time and from time to time to appoint a person as an additional director who shall retire from office at the next following ordinary general meeting, but shall be eligible for election by the company at that meeting as an additional director."

Questions arising out of the exercise of such a power have come before the courts from time to time, and I propose to refer to a few of the more important cases on the subject.

The first case is *Blair Open Hearth Furnace Company, Ltd.* v. *Reigart*, 108 L.T. 665. The company's articles provided that the directors might appoint additional directors up to the prescribed maximum, which was seven. A majority of the shares in the company was held by another company. That company, by its attorney, requisitioned an extraordinary general meeting of the shareholders of the company, at which it was resolved that the maximum number of the directors be increased and certain persons be elected additional directors. The election of additional directors was therefore a proceeding of the company itself and not a proceeding of its board. An action was started in the name of the company for an injunction restraining the persons so appointed as additional directors from acting as or holding themselves out as directors of the company. An injunction was granted on a motion, the court holding that the express power vested in the board of appointing additional directors excluded any implied concurrent power to the same effect in the company. The company had by its constitution delegated to the members of the board for the time being the sole right of appointing additional directors. The contentions of the rival parties are summed up by Eve, J., in these words : "The plaintiffs' case is that . . . the power to appoint additional directors is vested in the board of directors for the time being and cannot be exercised, while the article remains in force, by the company. The defendants, on the other hand, contend that the power of appointing additional directors is *primâ facie* a power exercisable by the corporation at large ; that in order to displace that *primâ facie* presumption a special contract whereby the corporation at large have delegated that power to some other body must be shown to exist ; that the burden of establishing such a special contract rests upon those who assert it, and that these articles, so far from exhibiting any such special contract, contain provisions which go to negative its existence." Pausing here for a moment, I must point out that the question in cases of this sort is a question of the construction of the articles. It is therefore both relevant and important to look at all the articles, and in this particular case the defendants relied strongly on the provisions of one of the articles which gave the company in general meeting the power to determine the numerical strength of the board. It was argued that if the company had power to increase the numbers of the directors, it must also have power to render such increase effective by filling up the newly created places. This argument was, however, rejected by the learned judge. It involved finding that the company and the board had concurrent powers, but on construction the learned judge thought that the express power given to the board by the articles left no room for a concurrent power in the company.

Now *Blair Open Hearth Furnace Company, Ltd.* v. *Reigart, supra*, was distinguished recently in the similar case of *Worcester Corsetry, Ltd.* v. *Witting* [1936] Ch. 640. There two additional directors were appointed at an extraordinary general meeting of the company and their appointment was contested on the grounds that only the board had power to appoint additional directors. Farwell, J., without expressing any opinion of his own, followed *Blair Open Hearth Furnace Company, Ltd.* v. *Reigart, supra*, but the Court of Appeal took a different view. Lord Hanworth, M.R., pointed out that the question was one of the construction to be placed on a particular set of articles, i.e., whether there was power vested or still remaining in the company to appoint additional directors, or whether the articles had vested that power in the directors and divested it from the company in general meeting. The learned Master of the Rolls referred at some length to the judgment of Eve, J., which I have referred to above, and admitted that he found some difficulty in seeing that the power must be either a power of the board or a power of the company. Turning then to the articles in the present case, he was unable to say that the company had, by giving this power to the board, clearly precluded itself from exercising it. I do not wish to go in detail into the arguments on construction upon which the decision of the court is based. On the contrary, I prefer to repeat once more that the matter is purely one of construction, and that in consequence the decision in one case cannot be taken as conclusive in another case in which the articles to be construed are not identical. For this reason the Court of Appeal in the second case did not have to overrule the earlier case in arriving at its decision, but it must be admitted that the distinctions between the two cases are fine ones.

Whatever the true construction of the articles may be, the company may, in certain circumstances, have the power to do things which it has delegated to the directors. *Barron* v. *Potter* [1914] 1 Ch. 859, is an example of such case. In that case the power of appointing additional directors was vested in the directors by cl. 85 of the Table A of 1908, which applied to the company. There were two directors, one of whom refused to attend board meetings, and the business of the company had been brought to a standstill by the inability of its two directors to see eye to eye. The one director convened an extraordinary general meeting of the company for the purpose of deposing his opponent and appointing a third person as an additional director. The other director sent a notice of a board meeting to his colleague, but this was not received in time. A strange scene was then enacted on a platform at Paddington Station, for the one director on alighting from a train was accosted by the other, who there

and then purported to hold a board meeting and to appoint three additional directors. Various other manœuvres were then executed by each director in turn, each attempting and purporting in different ways to appoint additional directors. Eventually writs were issued, and the court was asked to determine who, if anyone, had been validly appointed additional directors. The one protagonist had throughout purported to act through board meetings, while the other had summoned and attempted to hold a general meeting of the company. The champion of the board meetings objected that any appointments made at a general meeting must be invalid, as the power to make the appointments lay with the directors and not with the company. Dealing with the proceedings at the general meeting of the company, Warrington, J., said this: "The argument against the validity of the appointment is that the articles of association of the company gave to the board of directors the power of appointing additional directors, that the company had accordingly surrendered the power, and that the directors alone can exercise it. It is true that the general point was so decided by Eve, J., in *Blair Open Hearth Furnace Co.* v. *Reigart*, and I am not concerned to say that in ordinary cases where there is a board ready and willing to act it would be competent for the company to override the power conferred on the directors by the articles except by way of special resolution for the purpose of altering the articles. But the case which I have to deal with is a different one. For practical purposes, there is no board of directors at all. The only directors are two persons, one of whom refuses to act with the other. . . . If directors having certain powers are unable or unwilling to exercise them—are, in fact, a non-existent body for the purpose—there must be some power in the company to do itself that which, under other circumstances, would be otherwise done. The directors in the present case, being unwilling to appoint additional directors under the power conferred on them by the articles, in my opinion, the company in general meeting has power to make the appointment." In a case of deadlock, therefore, it does not matter whether the company would normally under its constitution have power to make the appointments, for, even if it has parted with the power, the existence of the deadlock revests the power in the general meeting. It is sufficient if there be a deadlock in practice—a position which makes it impossible for the board to continue to function properly. In applying the principle of *Barron* v. *Potter*, *supra*, in the case of *Foster* v. *Foster* [1916] 1 Ch. 540, Peterson, J., looks at the situation from a wide, practical view-point. "From a business point of view," he says, "it seems to me that there are only two persons who are possible managing directors, and the board has been reduced to the position that it is unable, owing to internal friction and faction, to appoint anybody as a managing director." In those circumstances the matter became one which should be decided by the company in general meeting.

I have headed this article "Additional directors," and I have referred to cases which were concerned with the appointment of additional directors. It must, however, be appreciated that the question in those cases of who had the right to appoint was only a particular example of a more general question, namely, whether the company can in certain circumstances itself exercise powers which it has expressly delegated to some other body. The point may arise in connection with the exercise of all sorts of powers and exactly the same principles of construction will apply whether the power sought to be exercised is a power to appoint additional directors or a power to do something quite different. Quite apart from questions of construction, it is clear that the fact that a certain power has been delegated to the directors does not deprive the company of the right to exercise that power in a case where the body to which the power was delegated has ceased to exist or does not think fit to exercise it—on this point, see further, *Isle of Wight Railway Company* v. *Tahourdin*, 25 Ch. D. 320, per Fry, L.J., at pp. 335–6.

A Conveyancer's Diary.

[Contributed.]

Undivided Shares.

For several years now there had been no reported decision on the changes made in the law relating to co-owners of land by the L.P.A., 1925, and the S.L.A., 1925, though such cases still give frequent employment to the practitioner. In the last few months, however, there have been two more, which I think deserve some comment, though they do not alter the law as it has been generally understood.

First, there was *Re Buchanan-Wollaston's Conveyance* [1939] Ch. 217, affirmed on appeal [1939] W.N. 137. Here four neighbours agreed among themselves to buy a piece of land whose maintenance as an open space was desirable for protecting the amenities of their houses. They provided the purchase-money in unequal shares, and the conveyance (in August 1928) was on its face to them as joint tenants in fee simple. In the following month they executed a deed of mutual covenant, regulating future dealings with the land, which imposed various restrictive covenants as to user and dealt with the division of profits.

The conveyance having been made after 1925 the legal estate in the land was treated as being vested in the four persons as trustees for sale by virtue of the L.P.A., 1925. Farwell, J., and the learned counsel engaged in the case all seem to have assumed that the statutory trusts were imposed by s. 36, which deals with cases where "a legal estate (not being settled land) is beneficially limited to or held in trust for any persons as joint tenants." It is not quite clear how s. 36 can be said to cover this case, as the property was neither beneficially limited to the four persons as joint tenants nor held in trust for them as such. They provided the purchase-money in unequal shares, and were, therefore, tenants in common in equity; the joint limitation was of the legal estate only. On the other hand, the case is equally hard to fit into any sub-section of s. 34, which imposes the statutory trusts on land held in undivided shares. The nearest provision is sub-s. (2), but even that only applies to "land *expressed* to be conveyed to any persons in undivided shares." Here the express conveyance was to joint tenants, and equity imported a beneficial tenancy in common. The question whether the statutory trusts were imposed at all was not really before the court, as everyone seems to have assumed that there was a statutory trust for sale, but will have to be decided some time. It does not arise in so acute a form where the conveyance was before 1926, as the transitional provisions are wider than s. 34, but it must frequently arise in regard to conveyances after 1925.

However, on the footing that there was a statutory trust for sale, one of the original four purchasers, having sold his house came to the court asking for an order under L.P.A., s. 30, that the land should be sold by the trustees for sale. Such a sale would, of course, have defeated the object of the arrangements of 1928, and was obviously unconscientious, since those arrangements had no reference to any trust for sale. The L.P.A., s. 30, provides "if the trustees for sale refuse to sell . . . or any person interested may apply to the court for a vesting or other order for giving effect to the proposed transaction or for an order directing the trustees for sale to give effect thereto, and the court may make such order as it thinks fit." Farwell, J., refused to exercise this jurisdiction, saying that the plaintiff was seeking to take advantage of the imposition of the statutory trusts to escape his contractual obligations, and that a court of equity ought not to assist his attempt. "To do so would be to disregard the well established rule of equity that he who seeks equity must do equity." The Court of Appeal took the same view. This case is not one whose circumstances are likely to arise again, but it suggests that the present tendency of the court is away from the very literal view of the effect of the statutory trust for sale which it adopted ten years ago, especially in the

series of cases on the ademption of testamentary dispositions of undivided shares.

The second case is *Re Thomas* [1939] Ch. 513, whose importance is that it follows the very short judgment of the present Lord Chancellor in *Re Cugny* [1931] 1 Ch. 305. In *Re Thomas* the testator died in 1915 leaving his real and personal estate to his wife for life and after her death to his children as tenants in common. The widow was also sole executrix. She died intestate in 1931. Immediately before her death, of course, the legal estate was vested in her as tenant for life. In 1932 letters of administration to her estate were granted to A. In 1938 letters of administration with the will annexed to the estate of the original testator were granted to B. The question was whether A or B was to have the legal estate on the statutory trusts. Those trusts were obviously imposed by S.L.A., s. 36. By that section, if and when after 1926 " settled land " is held in trust for persons entitled in possession under a trust instrument in undivided shares, the trustees of the settlement (if the settled land is not already vested in them) may require the estate owner in whom the settled land is vested . . . to convey the land to them . . . as joint tenants, and in the meantime the land shall be held on the same trusts as would have been applicable thereto if it had been so conveyed." By sub-s. (2) or (6) one of those trusts is the statutory trust for sale. Hence, on the grant of letters of administration to the estate of the tenant for life the legal estate vested in the administrator on the statutory trusts ; hence, it was land held on trust for sale, and hence there ceased to be any settled land at all : S.L.A., s. 1 (7). Accordingly, it could be said that the whole of s. 36 was nonsense in its application to this very common case, and necessarily must be nonsense in all cases, since it in a single breath refers to settled land and destroys the status of the land as settled land. In *Re Cugny* and *Re Thomas*, the court has declined to read the section so literally. In *Re Thomas* it held that the administrator of the original testator, who would, under S.L.A., s. 30 (3), have been S.L.A. trustee of his will if it had created a settlement which was still subsisting, was entitled to call for the legal estate under s. 36 (1). The real effect of these decisions is to interpret the references in that section to " settled land " as references to land which would, but for that section, be settled, and to give a corresponding meaning to " trustees of the settlement." Such a result is eminently reasonable and convenient, and it is to be hoped that it will now be taken as finally established.

Landlord and Tenant Notebook.

Grantee's Liability after Assignment.

EVERY now and again the reports record a case which serves to remind us of part of our duty towards intending assignors of terms who are also the original grantees. Clients answering to this description commonly suppose that the effect of the transaction contemplated will be to relieve them of all liabilities towards as well as to divest them of all rights against their landlords ; the advice that only half, and the latter half at that, of this proposition is tenable in law is unwelcome, but should none the less be tendered. It is, of course, right to add that while the intending assignor, as regards his landlord, will be subject to kicks but not entitled to ha'pence, he will have the right to pass on those kicks to the assignee—if within range. In the recent reminder afforded by *Metropolitan Properties, Ltd.* v. *Jones* (1939), 83 SOL. J. 399, this was not the case.

The principle by which the grantee continues liable on express covenants was judicially recognised over three centuries ago, when, in *Barnard* v. *Godscall* (1612), Cro. Jac. 309, a landlord sued the first tenant under the lease for breach of a covenant (expressed to bind executors and assigns) to repair at a month's notice. The plaintiff successfully demurred to a plea that long before the said warning the defendant had assigned to one J.S., who had always paid the rent, which the plaintiff had accepted. A few years later, in *Brett* v. *Cumberland* (1618), Cro. Jac. 521, the applicability of the principle in the case of an assignment of the reversion, against the estate of an original grantee, was demonstrated in an action for dilapidations. The lease had been granted by Queen Elizabeth to the defendant's testator in 1584, for a term of thirty-one years, the tenant covenanting to repair sufficiently and leave in repair ; in 1601 the tenant assigned the residue of the term to W.F. ; in 1615 James I assigned the reversion to the plaintiff ; the original tenant then died, and the lease expired ; the executors pleaded in vain that W.F. had paid the rent to three landlords.

It may be easy to attack the merits of this principle, and it is particularly advisable in this case that legal advisers should be drawn into a discussion in which they seek to defend them. Judges may do this with impunity ; but as an example of the danger to which a practitioner exposes himself by following their example, I will cite and comment upon a passage in the judgment of Lord Kenyon, delivered in *Auriol* v. *Mills* (1700), 4 T.R. 94, an action for rent against an original grantee who had become bankrupt ; argument not centring round the existence of the rule so much as round the question of its applicability when the assignment was due to the operation of Acts of Parliament. The learned Chief Justice said : " It is extremely clear that a person who enters into an express covenant in a lease continues liable notwithstanding the lease be assigned over . . . And this is founded not on precedents only, *but on reason ;* for when a landlord grants a lease, he selects his tenant ; he trusts to the skill and responsibility of that tenant ; and it cannot be endured that he should afterwards be deprived of his action on the covenant to which he trusted by an act to which he cannot object, as in the case of an execution. In such a case the lessor has no choice of the under-tenant [which, I take it, must be taken to mean or to include ' assignee '] : so here the assignees are bound to sell the term, and perhaps may assign to a person in whom the lessor has no confidence."

Like most readers, I have my own views on Coke's description of the common law as the perfection of reason ; but, apart from this, it is apparent that the very general sentiment contained in the first part of Lord Kenyon's apologia, while it appeals to reason, must have been prompted by his apologist's reactions to the particular facts with which he had to deal. And, if one were to rely on it to uphold the applicability of the principle, either generally or to similar facts, to-day, one would find oneself in an awkward position. First, in similar circumstances to-day, if bankruptcy does not result in forfeiture it is likely to result in disclaimer. Then, assuming that a landlord does select his tenant in reliance on the latter's skill and responsibility, he usually insists upon a covenant not to assign without consent ; and the disgruntled lay assignor's complaint is very frequently to the effect that the assignment was duly approved by the landlord with equal knowledge of the assignee's skill and responsibility. The defender may point out that the object of the covenant is to obviate possible consequences of the assignee or a later assignee assigning to a " man of straw," but the critic is still likely to doubt whether the principle is founded on reason. He will, possibly, regard the news as additional evidence of the grantor's greed.

The facts of *Metropolitan Properties, Ltd.* v. *Jones* were that the defendant, original tenant of a Cavendish Square flat, assigned his interest to one Dr. S., who subsequently disappeared. The defendant, unable to derive any advantage from his right to indemnity, express or implied (as to which see *Moule* v. *Garrett* (1872), L.R. 7 Ch. 101, discussed in the " Notebook," 20th May last, Vol. 83, p. 392), re-occupied the premises for which he was paying the rent. He then had

reason to complain of the noise made by central heating apparatus installed by the plaintiffs, the landlords, in the flat above; this was found and held to be a nuisance actionable at the suit of a tenant; but as the plaintiff had no legal interest he had no remedy.

The right to indemnity (apart from express covenant) was established, not without a struggle, in *Moule* v. *Garrett*, *supra*, as mentioned. But to say that the original grantee has an interest in the property is a different proposition, and one which may be said to have been disposed of in the course of *Re Russell; Russell* v. *Shoolbred* (1885), 29 Ch. D. 254, C.A., though it concerned an express covenant by a second assignor. Fry, L.J., delivering the judgment of the court, said: "It is argued on general principles of law that if Russell paid the rent under his covenant with Hampton, Russell had a right to recover that rent from the actual occupier of the estate as the person primarily liable for the rent, and it is suggested that this right was interfered with by the assignment taken by Hampton (who had acquired the reversions and terms) . . . The terms created by the sub-leases were, it was argued, a property or fund against which Russell had a right of recourse, but no case was cited, and we known of *no principle which would create a lien on the terms* in the hand of an assignee in favour of an assignor who had paid rent."

A further illustration of the weakness of the assigning grantee's position was provided by *Harris* v. *Boots Cash Chemists (Southern) Ltd.* [1904] 2 Ch. 376. A thirty years' lease, granted to the plaintiffs, contained tenant's covenants against making alterations to the premises without the consent of the lessor. Soon afterwards, the plaintiffs negotiated an assignment to the defendants, consent being obtained for certain alterations they proposed to make, and the defendants covenanting to perform and observe the covenants. They found that further changes were desirable, and proceeded to make them without applying for a licence. The lessor drew the plaintiffs' attention to this, and the action was brought for an injunction to compel the defendants to restore the *status quo*. Warrington, J., observed that the lessor could sue the plaintiffs for damages; though he could not obtain an injunction, as the plaintiffs had done and could do nothing to the premises. But the covenant made by the assignees, to perform and observe the covenants in the lease, was meant to give the plaintiffs a right of indemnity and nothing more.

But what has perhaps been the hardest case of this kind is that of *Stait* v. *Fenner* [1912] 2 Ch. 504. The defendant, a doctor, took a lease of a house in New Cavendish Street for twenty-one years from 1897, with tenant's option to break in 1904 and 1911. Two years later he assigned to a Miss C., complying with the requirement of consent demanded by a covenant against alienation. Three years after that Miss C. assigned to a Mrs. I. (having duly obtained a licence). Mrs. I. evacuated the premises in 1905, leaving no address. The landlord suggested that the defendant should obtain a reassignment. The defendant's solicitors succeeded in tracing Mrs. I. and she gave an undertaking to assign the lease to the defendant, or to surrender it. He thereupon took possession and in the following year applied for a licence to assign to one M., which was granted, the landlord never asking how the defendant came to be dealing with the lease but assuming that it had been reassigned to him in accordance with his suggestion. M. paid rent, and sub-let part with consent. Then in March, 1911, M. purported to exercise the option to determine the lease at the expiration of the second seven years, i.e., on 29th September of that year; the notice was formally acknowledged, and not till the 16th September did the landlord's solicitors write to the defendant contesting its validity on the ground that it was not given by the person in whom the leasehold term was vested. After some correspondence, the action was commenced, in December, for rent and a declaration. Neville, J., held that the defendant had not been Mrs. I's agent, so the term was still legally vested in her. His lordship also rejected a plea of estoppel, for which, I would submit, a great deal could be said; and the finding that the landlord had neither notice nor knowledge that the term was not vested in the defendant is a little startling having regard to the facts that permission had been given to him to assign to M., rent had been received from and acknowledged to M., and permission given to M. to sub-let. Be that as it may, *Stait* v. *Fenner* and *Metropolitan Properties, Ltd.* v. *Jones* show that, other things being equal, a tenant who has no use for the demised premises does better to underlet them than to assign his interest.

Our County Court Letter.

THE HIRE OF MOTOR COACHES.

In *Marsh* v. *Allenways, Ltd.*, recently heard at Evesham County Court, the claim was for £5 3s. as the balance of an account for the hire of three motor coaches. The plaintiff's case was that his coaches had been hired for the purpose of conveying holiday makers from Birmingham to the seaside. The coaches had been hired as a whole, for several years, and the price was the same whether a full load was carried or whether it was a part load or a mixed load of adults and children at half-fare. No dispute had occurred until 1938, when the defendants claimed a reduction in respect of children. The plaintiff's account was subject to an agreed discount of 5 per cent., and the net amount due was £85. The defendants, however, had only paid £79 17s. and the balance was the amount claimed. The defendants' case was that the agreement was that the plaintiff should be paid the fares less a commission. It was never agreed that the coaches should be paid for by an amount calculated on a full number of adult seats. Payment was made on the basis of so much per passenger, some of whom were children, and the deduction in question had been properly made. His Honour Judge Roope Reeve, K.C., held that the contract was based on the adult fare for the capacity of the coach, as alleged by the plaintiff. The last contract was made by reference to the transactions in the two previous years, and it was incredible that, in dealings over three years, no children were carried except on the last occasion. Judgment was given for the plaintiff, with costs.

THE SALE OF CHAMPAGNE CORKS.

In *Myers* v. *Boussoț and Co.*, recently heard at Westminster County Court, the claim was for £3 19s. 6d. as the price of goods sold. The plaintiff was a waiter and his case was that he offered to the defendants sixty-four full bottle and thirty-four half-bottle corks. It was customary for waiters to be paid 1s. each for vintage champagne bottle corks and 6d. each for half-bottle corks. The bottlers paid these amounts in order that the waiters should recommend certain vintages. Having retained the corks for inspection, the defendants offered only 4d. and 2d. per cork for the respective sizes. The plaintiff refused the offer and took away the corks, which were found to have been cut. They were therefore unsaleable elsewhere, and the plaintiff contended that the defendants had rendered themselves liable for the full trade price of used corks. The defendants' case was that they only paid on corks when their origin was known, in accordance with the trade custom. They did not deal with any "cork exchange." The plaintiff had stated that most of the corks came from a club at which he was a waiter. The defendants, however, were unable to obtain verification of this statement and were therefore unwilling to pay the price asked. Mr. Registrar Wickham held that the receipt for the corks showed that there was no contract to buy them. Judgment was given for the defendants, with costs.

To-day and Yesterday.

LEGAL CALENDAR.

5 JUNE.—On the 5th June, 1828, the magistrate at the London Guildhall saw before him "a mild and delicate looking young female not quite eighteen years of age named Jane Taylor." This young lady, the daughter of a respectable widow who had had her expensively educated, was in the habit of knocking her venerable parent about the house with fist or poker till she was black and blue. Once a lodger, who intervened, was chased to his room by Miss Jane who, poker in hand, dared him to come out and have his skull fractured. In court she refused to answer questions, showing no emotion. Finally the magistrate sent her to solitary confinement on bread and water, adding (for he had noticed that her only interest seemed to be her beautifully curled head of hair) that prison regulations would probably require her to be shorn. Only then was she touched.

6 JUNE.—On the 6th June, 1780, the Gordon rioters burst into the house of Lord Mansfield in Bloomsbury Square, sacking it and burning the law library annotated in his own hand. Of this disaster Cowper wrote :—

"So then—the Vandals of our isle,
Sworn foes of sense and law,
Have burnt to dust a nobler pile
Than ever Roman saw!
And Murray sighs o'er Pope and Swift
And many a treasure more,
The well-judged purchase and the gift,
That graced his lettered store.
Their pages mangled, burnt and torn,
Their loss was his alone;
But ages yet to come shall mourn
The burning of his own."

7 JUNE.—On the 7th June, 1792, Captain Kimber appeared in the High Court of Admiralty at the Old Bailey charged, on the evidence of his ship's surgeon, with the murder of a negro girl whom he was alleged to have beaten to death during a voyage, hanging her up first by her feet and then by her hands. The defence set out to prove that the surgeon bore the captain a grudge and that the story was a malicious invention and succeeded so well in turning the tables on him that he was ordered to be prosecuted for perjury.

8 JUNE.—The next day, the 8th June, 1792, saw the collapse of another "frame up," when Captain Donald Trail, late commander of the "Neptune," a Botany Bay ship, and William Ellerington, the chief mate, were honourably acquitted of the murder of one of the convicts on the passage out. They were given a copy of the indictment as a memento of the occasion and the attorney who had been behind the prosecution was ordered to be struck off the rolls.

9 JUNE.—On the 9th June, 1859, the House of Lords finally disposed of the litigation arising out of the eccentric will of Peter Thellusson.

10 JUNE.—On the 10th June, 1884, Herman Stellmacher was condemned to death at Vienna for complicity in the murder and robbery of Herr Eisert, a money-changer, to which he pleaded "not guilty," though he admitted the subsequent murder of a detective. He was a socialist agitator and his trial before a special court of six judges was marked by a fervent speech in explanation of his doctrines, the essence of which, he said, was the abolition of unnecessary wealth. He drew a moving picture of the misery of the labouring classes, and his description of his family's destitution so moved him that the President allowed him to sit down for a while. He was convicted and sentenced to death.

11 JUNE.—On the 11th June, 1731, "the prisoners in the Fleet Prison caused a riot and insulted the keepers, upon which the warden procured from the Tilt Yard two files of musketeers consisting of twelve men. The prisoners alleged they were ill-used and stood up for their rights and privileges."

THE WEEK'S PERSONALITY.

Thus a contemporary told the tale of Peter Thellusson: "Ye who listen with credulity to the whispers of vanity attend to the history of Peter Thellusson, late of the City of London, merchant. It is now sixty-two years since Peter Thellusson took stock of his worldly possessions and found that he had £600,000 in money and land of the annual value of £4,500. Peter Thellusson had satisfied the ordinary ambition of an English *bourgeois*—he had founded a family. Peers and peeresses might hereafter spring from the loins of that denizen of a dingy little back parlour behind the Bank. The best men upon 'Change envied the rich and prosperous Peter Thellusson who had no object of ambition unsatisfied. Peter was of a different mind. Peter was lucky enough to have three sons, and he would found three families. It was not that he loved his sons. It was the hope of this magnificently posthumous miser to associate his name in future generations with three colossal fortunes. Peter made a will. His great fortune was all conveyed to trustees. It was to accumulate until every man, woman and child of the offspring of Peter and alive or begotten at the moment of Peter's death should also be defunct. No one of the children or grandchildren who had ever trembled in his presence or squalled at the sound of his harsh, hard voice should ever be the richer for Peter's wealth." On the death of the last survivor the mountain of wealth was to be divided into three, the eldest male lineal descendant of each of his three sons getting a third. But when the time came litigation had so clipped his fortune that it was not much larger than when he left it.

LAW AT A PRICE.

THE recent conviction of a former judge of the United States Circuit Court of Appeals, on charges of conspiring over a period of years to sell decisions to the highest bidder, his gross takings being said to amount to about £100,000, discloses a course of conduct almost unique in legal history. The judicial indiscretions of Francis Bacon are far separated from us in atmosphere as well as in time, and the later scandals which cost Lord Chancellor Macclesfield a fine of £30,000 concerned jobs behind the scenes not touching his conduct as a judge. In spite of the frequently boasted incorruptability of our modern English judges there still survives a conviction in the minds of some litigants that there must be a back door somewhere. There was once a county court judge who, travelling in a railway carriage, was asked by a fellow passenger the way to the court. The stranger followed up his inquiry by a few speculations as to the character of the judge. "'Im as keeps the beer shop," he observed, "sez 'e's a stuck-up hass and the baker sez 'e's a bloomin' fool, but both on 'em sez as 'ow it's best to see 'im fust afore yer case comes on 'cause it maikes a difference."

BIDS FOR JUSTICE.

AT Manchester Mr. Justice Wills once received a letter from a hawker, the defendant in an action set down at the assizes. After outlining his case the man continued: "Now, sir, when you have given judgment for the defendant with costs, if there is any small article of value that you feel you could comfortably wear it shall be sent." In the course of an appropriate rebuke the judge mentioned that the case was not coming on before him anyway, whereupon the man, profusely apologising for his mistake, asked who was the judge who would handle the matter. At the Cardinganshire Assizes Mr. Baron Alderson once had a £10 note sent to him by a defendant. On another occasion a prisoner who knew Mr. Baron Martin's sporting tastes took advantage of the customary speech before sentence to say: "I hope your lordship will not be too hard on me and perhaps your lordship

would accept a beautiful game-cock I have at home." The judge, who had a sense of humour and a kind heart, passed a sentence, which was not severe, taking care to add: "Mind, you must not send me that game-cock."

Reviews.

Traumatic Mental Disorders in Courts of Law. By WILLIAM A. BREND, M.A. (Camb.), M.D., B.Sc. (Lond.), of the Inner Temple, Barrister-at-Law. 1938. Demy 8vo. pp. vii and (with Index) 104. London: William Heinemann (Medical Books), Ltd. 7s. 6d. net.

In spite of a somewhat formidable title, this book is not as technical as it sounds, since it is written not only for doctors and lawyers, but also for employers and for representatives of insurance companies or trade unions acting for injured workmen. The author sets out clearly and reasonably the difficulties of ascertaining in the formal atmosphere of a court of law and within the rigid limits prescribed by the rules of evidence the nature and cause of a mental disorder, the roots of which may lie far beyond the accident after which it became manifest. The lawyer must concur with many of his criticisms and suggestions even if he cannot agree that the knowledge general among medical practitioners in such matters has yet attained such a degree of objective certainty that the checks now imposed on their freedom of expression can be discarded otherwise than cautiously. The jury is a necessary break on the professionalism of lawyers, and doctors, being only human, cannot be a law unto themselves. Certain recent decisions relating to the liability of owners of vehicles to persons who suffer "shock" on witnessing street accidents may give rise to a class of claim in which the matters treated in this book are of vital importance. The author's conclusion that "neither physical nor mental trauma ordinarily produces any serious or persistent effects in a normal person" and the grounds on which it is based have a very practical interest. Both counsel and solicitors framing claims in respect of mental disorders following upon accidents and framing defences to such claims will find that this book directs their minds along new and useful avenues of thought.

Books Received.

"*Taxation*" *Key to Income Tax, Sur-tax and National Defence Contribution*, 1939–40. Fifth Edition. 1939. Demy 8vo. pp. 160. London: Taxation Publishing Co., Ltd.; Jordan & Sons, Ltd. 3s. 6d. net.

Liability for Animals. By GLANVILLE L. WILLIAMS, LL.B., M.A., Ph.D., of the Middle Temple, Barrister-at-Law. 1939. Royal 8vo. pp. lxvi and (with Index) 409. London: Cambridge University Press. 25s. net.

Notes on District Registry (High Court of Justice) Practice and Procedure, including Matrimonial Causes. By THOMAS STANWORTH HUMPHREYS, Clerk in Charge, Birmingham District Registry. Fifth Edition, 1939. Crown 8vo. pp. (with Index) 153. London: The Solicitors' Law Stationery Society, Limited. 5s. net.

Accounting under the Moneylenders Act, 1927. By DONALD W. T. BRUCE, A.C.A., Chartered Accountant. 1939. Demy 8vo. pp. 39. London: The Solicitors' Law Stationery Society, Limited. 4s. net.

Report of the Inter-Departmental Committee on Abortion. 1939. London: H.M. Stationery Office. 2s. 6d. net.

Report to the Lord Chancellor on H.M. Land Registry for the Financial Year 1938–39. By the Chief Land Registrar. 1939. London: H.M. Stationery Office. 4d. net.

The Juridical Review. Vol. LI. No. 2. June, 1939. Edinburgh: W. Green & Son, Ltd. 5s. net.

Notes of Cases.

House of Lords.

Fyfe *v.* **Irwin.**

Lord Thankerton, Lord Russell of Killowen, Lord Macmillan, Lord Wright and Lord Romer.
30th March, 1939.

WILL—INITIAL GIFT OF PROPERTY IN FEE SIMPLE—SUBSEQUENT GIFT OVER IN THE WILL—FAILURE OF GIFT OVER—WHETHER FEE SIMPLE REVIVES.

Appeal from an interlocutor of the First Division of the Court of Session.

The testator, Ronald Livingston, died in 1871, having made a will in 1868, and leaving him surviving his widow, two sons, Ronald and Alasdair, and three daughters, Mary, Emily and Flora. By the will an annuity was left to the widow, and £20,000 was to be paid to the elder son, Ronald, on his reaching twenty-four years. The will further provided, so far as material, for the division of the residue of the estate among the children other than Ronald and their issue *per stirpes*, Alasdair to receive his accumulated share on reaching the age of twenty-four. The trustees were given directions with regard to the daughters' shares, which they were to hold, paying the annual income to the beneficiary when due only; on the death of each, the trustees were to hold the share of each for her lawful issue as she should by deed or will appoint, and "failing issue" for the other residuary legatees. Finally, the shares were to vest in the children on their attaining majority, or, in the case of the daughters, their marrying, and, if any child died before acquiring a vested interest and without lawful issue, his or her share was to fall into residue and be divisible among the other children in accordance with the will. Ronald died in 1926 without ever having had issue. On a special case presented to the Court of Session in 1927, it was held that the interest of each daughter was restricted to an alimentary life rent, and that the share of which any daughter was thus life tenant fell absolutely to the other residuary legatees who attained majority, and that "failing issue" meant "without leaving issue surviving." Alasdair died in 1933, and Emily, a spinster, in 1936. Mary died in 1934, having had a child who had died in 1918. In accordance with the decision of the First Division, Mary's fourth share was on her death divided equally between Emily and Flora, and on Emily's death her fourth share was paid to Flora. Flora having died a spinster in 1936, the question arose who was entitled to the fourth share of which she had been life tenant. The trustees moving to have that question determined, the representatives of the four children other than Flora claimed that Flora's undisposed-of share fell to be divided among the testator's heirs in intestacy, i.e., the five children. Flora's representatives claimed that the undisposed-of share belonged to Flora and so vested in them. The Lord Ordinary found in their favour, the First Division reversed that decision, and Flora's trustees now appealed. *Cur adv. vult.*

LORD RUSSELL OF KILLOWEN said that Flora's trustees' claim was based on the alternative contentions that she was entitled (1) by virtue of the gift over to the other residuary legatees if a daughter should die failing issue; or (2) under the doctrine of initial gift of the fee, known as the rule in *Lassence* v. *Tierney* (1849), 1 Mac. & G. 551, on the footing that there was an absolute gift to her in the first instance of the fourth share, upon which trusts had been engrafted which had failed, so that the original gift of the fee simple in the share survived. The other parties contended that the destination over had failed because the survivor to whom the share was to pass must be someone who had survived the daughter whose death was in question, and that the rule in *Lassence* v. *Tierney*, *supra*, did not apply, either because there was no original gift of the fee of the fourth share or because, even if there were, the rule did not apply whether the destination over was in favour of persons

other than the issue of the life tenant. In his (Lord Russell's) opinion, the one person who could not possibly take any interest under the destination over was the residuary legatee on whose death that trust was to come into operation. He was of opinion, however, that the will did contain an initial gift of fee to Flora and that the rule in *Lassence* v. *Tierney*, *supra*, did apply. Every destination over, whether in favour of issue or of strangers, seemed alike. To the extent to which it took effect, it hindered the operation of the absolute gift, and there seemed to be no reason why, when the hindrance disappeared, the original gift should not operate as much in the one case as in the other. The appeal must be allowed.

The other noble lords concurred.

COUNSEL: *Charles Mackintosh*, K.C., and *H. McKechnie*; *J. R. W. Burnet*, K.C., and *J. R. Philip*.

SOLICITORS: *Claremont, Haynes & Co.*, for *Beveridge, Sutherland & Smith*, Leith, and *Montgomerie, Flemings, Fyfe, Maclean & Co.*, Glasgow (appellants); *John Kennedy & Co.*, for *A. & A. S. Gordon*, Edinburgh.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Court of Appeal.

Swettenham *v.* Swettenham.

MacKinnon and Luxmoore, L.JJ., and Macnaghten, J. 19th May, 1939.

DIVORCE—DECREE ON GROUND OF INSANITY—MAINTENANCE OF RESPONDENT WIFE.

Appeal from Collins, J. (83 SOL. J. 177).

A husband having been granted a decree *nisi* of divorce in May, 1938, on the ground of his wife's incurable insanity, the receiver under whose control her estate had been since 1930 applied, as her guardian *ad litem*, for a maintenance order. The registrar in a report recommended (*inter alia*) that the bulk of her capital, consisting of accumulations of money saved by the receiver out of the moneys paid to him each year, should be used to buy her an annuity and the judge adopted this report. On appeal it was submitted that the order was wrong since the consent of the Master in Lunacy had to be obtained before any alteration could be made in her income and, the court having intimated that the order could not stand as it was, the case was stood over for an agreement to be reached between the parties and sanctioned by the Master or Judge in Lunacy, with an intimation that in the opinion of the court some part of the accumulations should be expended in the purchase of an annuity. A form of order was now put before the court whereby the receiver was to apply to the Master in Lunacy for leave to expend, in the purchase of an annuity, such sum as should be raised by the sale of all the wife's securities but £350. It was further provided by the order that the husband should provide such a sum annually as might be required for her maintenance up to a limited amount, the payments to be secured after his death by an irrevocable charge on the funds in the marriage settlement. It was asked that the court should discharge the judge's order.

MACKINNON, L.J., said that the order could be made subject to the approval of the Master in Lunacy of the wording and of any minor adjustments.

COUNSEL: *Middleton*, K.C., and *W. Latey*; *A. M. Stevenson*.

SOLICITORS: *Lowe & Co.*; *Gordon, Dadds & Co.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

High Court—Chancery Division.

In re Warren; Public Trustee *v.* Fletcher.

Simonds, J. 26th April, 1939.

WILL—CONSTRUCTION—DIRECTION TO TRUSTEES TO INVEST IN SPECIFIED SECURITIES—SECURITIES TO BE APPROPRIATED TO SETTLED LEGACY—PUBLIC TRUSTEE SUBSEQUENTLY APPOINTED TRUSTEE—WHETHER AT LIBERTY TO INVEST IN ANY AUTHORISED INVESTMENT—TRUSTEE ACT, 1925 (15 Geo. 5. c. 19), s. 69 (2).

By his will a testator, who died in 1880, gave his residuary estate to trustees on trust to "sell, dispose of and convert into money all such parts thereof as shall not consist of money or of some or one of the stocks, funds or securities in or upon which investments are hereinafter authorised to be made and which they or he or she shall think proper to retain." He directed them to invest the residue in "the Government bonds or other securities of the United States of America or the bonds of the State of Massachusetts or of the City of Boston or upon the bonds of any of the following railway companies, viz., the Boston and Albany, the Boston and Maine, the Boston and Lowell and the Boston and Fitchburg, or upon mortgage of property in the City of Boston or upon the bonds of such other first-class railway companies as my trustees or trustee may select with power from time to time to vary such investments and also the investment of any stocks, funds, shares or securities which shall belong to me at my decease and be retained unconverted for others of the same or the like nature as they, he or she shall think proper and expedient." The testator further directed his trustees to appropriate "out of the stocks, funds, shares and securities to arise from the investments hereinbefore directed or which shall belong to me at my decease and be retained unconverted" the sum of £35,000 or stocks, funds, shares or securities equal in amount or value to it on trust "either to invest the said sum of £35,000 or to continue the same invested in or upon some or one of the stocks, funds, shares or securities in or upon which investments are hereinbefore authorised to be made with power from time to time to vary such investments for others of the same or the like nature as my trustees or trustee shall think proper or expedient." Beneficial interests in this sum were declared in favour of the daughter and her children. There was a power to postpone conversion and retain the investments existing at the testator's death. In 1938 the Public Trustee became trustee so far as regarded this trust legacy. A schedule to the deed appointing him set out a list of the investments in which the fund was then invested. It did not include any of those mentioned in the will nor were the investments such as the testator could have held, since they were all stocks created or first issued since his death. The question arose whether the Public Trustee could exercise the powers of investment in the Trustee Act, 1925, s. 1, or was confined to the power contained in the will.

SIMONDS, J., referred to the Trustee Act, 1893, s. 1, and the Trustee Act, 1925, ss. 1 and 69 (2), and said that the 1925 Act was a consolidating Act not intended to alter the law (see *In re Turner's Will Trusts* [1937] Ch. 15). The words "unless a contrary intention is expressed" had the same force as the words "unless expressly forbidden" in the 1893 Act. Here there was a direction to invest in certain specified investments, but no prohibition against other investments. Thus the Public Trustee had power to invest the fund in any of the investments authorised by the 1925 Act. On the question whether the direction to appropriate certain investments to the fund altered the position, his lordship doubted whether the decision in *In re Owthwaite* [1891] 3 Ch. 494, was justified, but said there was a distinction between the case of an annuity fund and a fund for a settled legacy. If the decision was binding, it was binding only on the appropriation of a fund for an annuity. The Public Trustee could exercise the powers of investment conferred by the 1925 Act.

COUNSEL: *Hubert Rose*; *W. M. Hunt*; *Thomas Cunliffe*.

SOLICITORS: *Thompson, Quarrell & Co.*; *Sharpe, Pritchard & Co.*, for *Laces & Co.*, of Liverpool; *J. & P. J. F. Chapman-Walker*.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

High Court—King's Bench Division.

Emcee, Ltd. *v.* Sunday Pictorial Newspapers (1920), Ltd.

Singleton, J. 24th March, 1939.

PRACTICE — COSTS — LIBEL — COMPLAINT OF ARTICLE AND POSTER—TWO CAUSES OF ACTION—GENERAL PAYMENT OF SUM INTO COURT—VALIDITY—R.S.C., Ord. 22, r. 1 (2).

Question relating to costs arising out of an action for libel tried by Singleton, J., with a special jury.

The plaintiffs sued the defendants for libel in respect of an article in the *Sunday Pictorial* and a poster, and the jury returned a verdict for the plaintiffs for one farthing in respect of each matter. The defendants paid £50 into court generally with a denial of liability. Counsel for the plaintiffs, on the jury's verdict, asked for judgment for one halfpenny, but did not ask that the defendants should be ordered to pay the plaintiffs' costs. Counsel for the defendants contended that, as there had been a payment into court, albeit with denial of liability, that should be taken into consideration and the plaintiffs should pay the defendants' costs. A further ground for counsel's contention was his allegation that the jury had given an indication that, in their opinion, the action should not have been brought.

SINGLETON, J., said that the effect of both *Weber* v. *Birkett* [1925] 2 K.B. 152, and *Smith* v. *Schilling* [1928] 1 K.B. 429, was that, where there were two causes of action and one general payment into court, that payment was not good. See *per* Bankes, L.J., in the former case, at p. 154, and *per* Scrutton, L.J., in the latter case at p. 438. The difficulties of defendants in cases of this kind, no doubt, led to the present R.S.C., Ord. 22, r. 1 (2), which provided "Where the money is paid into court in satisfaction of one or more of several causes of action the notice shall specify the cause or causes of action in respect of which payment is made and the sum paid in respect of each cause, unless the court or a judge otherwise order." It followed that, in a case of this kind, where there were two causes of action, the article and the poster (the statement of claim being in that sense wider than the writ, although no point was made of it), it was open to the defendant who wished to pay money into court to apply to the court to be allowed to make a general payment in. In the present case no such application was made, the £50 simply being paid in generally, although there were two causes of action. In view of the cases cited above, and the express terms of Ord. 22, r. 1 (2), he (his lordship) must hold that the payment in was, as was contended for the plaintiffs, a nullity. Counsel's argument for the defendants was based largely on *Barber* v. *Pigden* [1937] 1 K.B. 664, but that case did not affect this particular point, dealing as it did with the case where there was more than one cause of action and counsel at the trial treated them as one. His lordship, having ruled against the submission of counsel for the defendants with regard to the indication which he contended that the jury had given, gave judgment for the plaintiffs for one halfpenny, with no costs on either side, the £50 to be paid out to the defendants.

COUNSEL: *Sir Patrick Hastings*, K.C., and *F. W. Beney*, for the plaintiffs; *Norman Birkett*, K.C., and *J. Senter* (*Valentine Holmes* with them), for the defendants.

SOLICITORS: *Freke Palmer, Romain & Romain; Michael Abrahams, Sons & Co.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Norreys *v.* Zeffert.

Atkinson, J. 28th March, 1939.

GAMING—DEBT TO BOOKMAKER—DEBTOR UNABLE TO PAY—THREAT TO INFORM TRADE PROTECTION SOCIETIES AND DEBTOR'S CLUB—WHETHER LEGITIMATE AS FOUNDATION FOR FRESH AGREEMENT BY DEBTOR TO PAY SUM DUE.

Action to recover a sum alleged to be due under an agreement.

The defendant admitted owing the plaintiff, a bookmaker, a certain sum in respect of bets on horse-races, but relied on s. 18 of the Gaming Act, 1845. The plaintiff alleged that the sum was due under an agreement dated the 24th June, 1938, made between the defendant and the secretary of the Turf Protection Society. As to the alleged agreement, the secretary said that on the 24th June, he traced the defendant to his club and began with the customary threat of reporting him to Tattersalls. He then said that his society would notify 6,000 bookmakers throughout the country so that any bets which the defendant might make would be held up. Those threats did not affect the defendant, as, however, he could not pay, was in financial difficulties and had no intention of betting again. The secretary then said that he would notify the defendant's club, and the trade protection societies. Eventually, according to the secretary, the defendant said that he had some deals on, which would improve his position, and that he would see the secretary later with proposals which would secure payment within three months. The action was based on that promise.

ATKINSON, J., held on the evidence that the plaintiff had failed to satisfy him that there had been any contract on the 24th June between the secretary and the defendant; but even if he had held otherwise, a serious question would have arisen whether a promise so obtained would be enforced by the courts. It was disputable how far a promise to pay money induced by threats was enforceable. *Thorne* v. *Motor Trade Association* [1937] A.C. 797, seemed to establish that, if the threat were to take a step in lawful furtherance of the creditor's business interests, the refraining from taking such a step might be good consideration for a promise to pay money not otherwise recoverable, however seriously the person threatened would be injured by the carrying out of the threat. On the other hand, if the threat were made only with the object of injuring the person threatened, in order to induce the payment of money, the refraining from carrying it out was not, in general, good consideration for a promise to pay. In his opinion, the threat to report the defendant to Tattersalls was one which the plaintiff was entitled to make. It merely contemplated taking a step in accordance with the recognised practice of bringing the matter before an independent committee, and the plaintiff would be in no way responsible for the consequences to the defendant which would automatically follow. But threats to inform the defendant's local club and trade protection societies were ones of the class which the courts had held that the creditor was not entitled to make. The action failed.

COUNSEL: *B. M. Cloutman; Seymour Collins.*

SOLICITORS: *Leslie Marrison; Amphlett & Co.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

E. E. & Brian Smith (1938), Ltd. *v.* Wheatsheaf Mills, Ltd.

Branson, J. 28th March, 1939.

CONTRACT—GOODS DAMAGED—ARBITRATION—BUYER HELD ENTITLED TO REJECT AND RECOVER PRICE—TRADE CUSTOM FOR MAKING CLAIMS *seriatim*—SUBSEQUENT CLAIM FOR DAMAGES FOR NON-FULFILMENT OF CONTRACT—AWARD IN FAVOUR OF BUYERS—WHETHER MAINTAINABLE.

Appeal by case stated from a decision of the Appeal Committee of the London Corn Trade Association.

The buyers, having bought from the sellers a consignment of white peas, were held entitled by an arbitrator to reject them because they arrived damaged, and to recover the price paid. The sellers having duly paid the sum awarded against them, the buyers then claimed from them £187 10s. for non-fulfilment of the contract. Arbitrators having awarded in favour of the buyers also on that claim, the

sellers appealed to the appeal committee, before whom they contended *inter alia* that the buyers could have put forward their claim for damages in the first arbitration; that the damages now claimed flowed from the same breach of contract as that on which the buyers had claimed the right to reject and to be repaid the price; and that the buyers were therefore now barred from making any further claim. The appeal committee found as a fact that there was a well-recognised custom in the trade that, where a buyer claimed the right to reject goods tendered, he was entitled to limit his claim to the question of rejection and was not bound to put forward any claim for damages until the question as to the right to reject had been determined. They also found that it was a well-recognised custom in the trade that a buyer, having obtained an award allowing rejection, was entitled in a further arbitration to claim such damages as he could prove he had sustained by reason of a breach of contract by the seller. The sellers appealed.

BRANSON, J., said that the principles governing the application of the maxim *nemo debet bis vexari pro una et eadem causa* were exhaustively discussed in *Brunsden* v. *Humphrey*, 14 Q.B.D. 141. Lord Maugham in *Namlooze, &c., Vulcaan* v. *A/S J. Ludwig Mowinckels Rederi*, 43 Com. Cas. 252, at p. 258, said that in mercantile references it was an implied term that the arbitrator must decide the dispute according to the existing law of contract unless the parties had agreed to exclude it. If, then, by the ordinary law of contract all the buyers' claims should have been raised in the earlier arbitration, the question would be whether the parties had agreed to exclude that ordinary law. When persons made a contract in a particular market they were held bound by any custom prevailing in that market, provided that it was reasonable, certain and not unlawful. The contract, read in the light of the custom, provided for the settlement of disputes *seriatim*, without the necessity of putting forward all claims at once. It was not suggested that the custom was contrary to law, and in his view it was very convenient to have a prompt decision whether the buyer was entitled to reject, without having to go into all claims which might eventually arise. It was unnecessary that every possible claim should be put before the arbitrator in the first instance. The award was accordingly right. The same result could be reached on another and simpler ground. Even if it were decided that the buyers were entitled to reject the goods tendered, the sellers might within any time limited by the contract have made a fresh tender of goods which did comply with the contract: *Barrowman* v. *Free*, 4 Q.B.D. 500. As long as it remained open to the sellers to make a good tender, the buyers had no right of action for damages, and they could not have claimed damages until the contract had been actually broken. On that ground also the award was right.

COUNSEL: *Cyril Miller*, for the appellants, the sellers; *Mocatta*, for the buyers.

SOLICITORS: *Godden, Holme & Ward; Richards, Butler & Co.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Campbell *v.* Shelbourne Hotel, Ltd.

Cassels, J. 31st March, 1939.

WARRANTY—NEGLIGENCE—HOTEL—PASSAGE UNLIGHTED AT 11.20 P.M.—STAIRCASE LEADING STRAIGHT DOWN FROM DOOR IN PASSAGE—GUEST INJURED WHILE LOOKING FOR DIFFERENT DOOR—LIABILITY.

Action for damages for negligence or breach of warranty.

The plaintiff was staying at the defendants' hotel. Returning to the hotel on the 24th April, 1938, at about 11.20 p.m., he wished, on reaching his room, to visit a lavatory which he had used that morning. The passage outside his room was dark, but he knew that he had to turn to the right and that the lavatory door was a little way along on the left. The light which he had switched on in his bedroom shone obliquely through the door into the passage. Crossing to the other side of the passage, he felt his way along it to a door. Thinking it to be the door of the lavatory, he opened it and immediately fell down a flight of stairs which were formed in such a way as to constitute an abrupt drop from the door. He brought this action claiming damages for his injuries. The defendants contended that there was no negligence on their part as there was an electric light switch in the passage a few feet from the plaintiff's bedroom door, and as in any case there were a bell and a telephone in his room; that the plaintiff was himself negligent; and that he had no right to go through the door leading to the stairs and was accordingly a trespasser in doing so. Evidence was given that 11.20 p.m. was a reasonable hour at which to use the passage and that it was the night porter's duty to extinguish the lights a reasonable time after the guests had returned at night.

CASSELS, J., said that he would not discuss the position which would have arisen had the accident happened at, say, 3 a.m. It had happened on the very edge of the passage. It was not disputed that the plaintiff was an invitee. *Wilkinson* v. *Fairrie* (1862), 1 H. & C. 633, was a very different case, there being no obligation on the defendants to light the dark passage in question. Here there was a duty on the defendant company to light the passage at a reasonable hour for the use of invitees in the ordinary conduct of their affairs. *Walker* v. *Midland Rly. Co.* (1886), 55 L.T. 489, was distinguishable from the present case by many features. The present plaintiff suffered his accident at the very moment in which he opened the door. The plaintiff in *Walker* v. *Midland Rly. Co.*, *supra*, went through a dark service room when there were properly lighted closets available. *Maclenan* v. *Segar* [1917] 2 K.B. 325, laid down that the contract between a hotel-keeper and his guest contained an implied warranty that the premises were as safe for the purpose of the contract as reasonable care and skill could make them. It was the defendants' duty in the present case to keep the passage in question reasonably lighted at 11.20 p.m. in a London hotel, and their failure to discharge that duty caused the plaintiff's accident. He (his lordship) concluded on the evidence that the plaintiff had himself acted reasonably. There must therefore be judgment in his favour.

COUNSEL: *Aiken Watson; Humfrey Edmunds.*

SOLICITORS: *Wrinch & Fisher; Wedlake, Letts & Birds.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

R. *v.* Camberwell Borough Assessment Committee and Others; *Ex parte* Metropolitan Housing Corporation, Ltd.

Lord Hewart, C.J., Macnaghten and Singleton, JJ. 31st March, 1939.

RATING AND VALUATION (METROPOLITAN)—SINGLE OCCUPATION OF HOUSE CHANGED INTO TWO TENANCIES—HIGHER RENT—SUPPLEMENTAL VALUATION—WHETHER VALUE "FROM ANY CAUSE INCREASED"—VALUATION (METROPOLIS) ACT, 1869 (32 & 33 VICT., C. 67), S. 47.

Rules *nisi* for *certiorari*.

A house in Camberwell which had been in the rateable occupation of one tenant was, in September, 1938, reported by a rate collector to the borough council to be now wholly let by its owners to two separate tenants paying rent direct to a non-resident landlord, the rents together representing an increase of the rent formerly paid by the single tenant. In October, 1938, the council sent to the borough assessment committee a provisional list which included the house in question and showed that its gross and net annual rateable values respectively had increased from £41 to £47 and from £29 to £34. The town clerk of Camberwell stated in an affidavit that, in view of the letting out of the house in separate tenements, the relevant provisions of the First Schedule to the Rating and Valuation Act, 1928, had ceased

to be applicable to it, and that the borough council accordingly, in pursuance of the provisions of the Third Schedule to the Valuation (Metropolis) Act, 1869, in calculating the net annual and rateable value of the house, determined the rate of deduction from the gross annual value in the manner prescribed by the schedule. By s. 47 of the Act of 1869, "If in . . . any year the value of any hereditament is increased by the addition . . . of any building, or is from any cause increased or reduced in value, the following provisions shall have effect . . . ", an adjustment of the rateable value being then authorised. These rules were then obtained by the owners of the house for writs of *certiorari* to be issued to the assessment committee and to the borough council as rating authority for the removal into the High Court of the provisional rating valuation list made in the borough in September, 1938.

LORD HEWART, C.J., said that the whole question was whether it was true to say here, on the materials disclosed, that the value of the hereditament in question was from any cause increased. The meaning of those words was considered, for example, in *Camberwell Assessment Committee* v. *Ellis* [1900] A.C. 510, where Lord Davey, at p. 523, said that the words could not be confined to structural alteration, but that the words "from any cause" must be read as *ejusdem generis* in the sense that it must be a cause which affected the value of the particular property. It was not sufficient to say that there had been an alteration in value. Some definable cause must be pointed to to which the alteration was due, the cause being one which affected the assessable value of the particular property in question, even though it might also affect the assessable values of other properties. The affidavit of the town clerk made it clear that there had been a change from an ordinary dwelling-house to a tenement house; and that that change had involved, not only a change of value, but also a change of classification. In his (his lordship's) opinion, those were materials on which the authorities were entitled to conclude that there had been, within the meaning of the section, an increase in value from some cause. The rule should be discharged.

MACNAGHTEN and SINGLETON, JJ., agreed.

COUNSEL: *R. M. Montgomery*, K.C., and *Hubert Hull* showing cause; *M. E. Rowe* in support.

SOLICITORS: *Sharpe, Pritchard & Co.*, for *Darrell Musker*, Town Clerk, Camberwell: *Blundell, Baker & Co.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

In re The Trunk Roads Act, 1936, and *In re* The London Portsmouth Trunk Road (Surrey) Compulsory Purchase Order (No. 2), 1938.

Lord Hewart, C.J., Macnaghten and Singleton, JJ.
21st April, 1939.

TRANSPORT—TRUNK ROAD—COMPULSORY PURCHASE ORDER FOR ACQUISITION OF LAND — PROPOSAL TO SINK TRUNK ROAD BENEATH CROSSING ROAD — EFFECT ON ORDER—WHETHER PROPOSAL VALID—"IMPROVEMENT" TO TRUNK ROAD—SUNK ROAD A "NEW ROAD"—PUBLIC LOCAL INQUIRY—REFUSAL TO PERMIT OBJECTORS TO CROSS-EXAMINE REPRESENTATIVE OF MINISTRY—WHETHER WRONGFUL—RESTRICTION OF RIBBON DEVELOPMENT ACT, 1935 (25 & 26 Geo. 5, c. 47), s. 13—TRUNK ROADS ACT, 1936 (1 Edw. 8 & 1 Geo. 6, c. 5).

Motion to quash a compulsory purchase order dated the 28th July, 1938, made by the Minister of Transport under the Trunk Roads Act, 1936, and s. 13 of the Restriction of Ribbon Development Act, 1935.

By the order in question the Minister was authorised to acquire lands at the Hook cross-roads formed by the Kingston by-pass with the Surbiton to Leatherhead main road, which lands included part of the lands belonging to the applicants, the owners respectively of the "Ace of Spades" road house and the petrol station adjoining it. The order stated that the land was required for the improvement of the Kingston by-pass. The Kingston by-pass formed part of the London-Portsmouth road, which, by virtue of the Trunk Roads Act, 1936, became a "trunk road" on the 1st April, 1937; and from that date the Minister of Transport was highway authority for the by-pass. The by-pass was constructed as a single 30 ft. carriageway, and at the Hook cross-roads a small roundabout was made to accommodate the crossing traffic. The traffic being now very much greater, the original single 30 ft. carriageway was inadequate. The Minister of Transport therefore proposed to substitute dual carriageways 30 ft. wide for the original single 30 ft. carriageway, and to improve the roundabout at the Hook cross roads by increasing the diameter of the central island from 60 ft. to 143 ft. He further proposed to excavate the ground under the enlarged roundabout and to construct dual carriageways beneath it for the through traffic. The result of that work would be that, whereas at present the "Ace of Spades" road house and petrol station stood in full view of all the traffic on the by-pass, they would no longer be visible by the through traffic passing beneath the roundabout. The public local inquiry into the draft order was held pursuant to the requirements of s. 13 of the Restriction of Ribbon Development Act, 1935, and the procedure to be followed was laid down by ss. 160-162 of the Local Government Act, 1935, as modified by the Trunk Roads Act, 1936. At the inquiry an engineering inspector of the Ministry of Transport, representing the divisional road engineer of the Ministry, read a statement setting out the Minister's proposals for the improvement of the by-pass, produced documents and plans, and, in answer to questions addressed to him, gave certain further explanations and information. No evidence was called on behalf of the Minister. While ready to answer questions as to the nature of the Minister's proposals, the engineering inspector objected to answering questions as to the necessity for those proposals and as to alternative schemes for improvements suggested by or on behalf of the objectors. The applicants moved that the order should be quashed on the grounds (A) that the Minister had no power to make it, and (B) that at the public inquiry no witness was called in support of the scheme and the official appointed by the Ministry to hold the inquiry ruled that objectors were not entitled to cross-examine the engineering inspector of the Ministry of Transport at the inquiry. (*Cur. adv. vult.*)

LORD HEWART, C.J., reading the judgment of the court, said that the court agreed with the Minister's contention that, even if there were no power to make the proposed subway, that fact would afford no valid reason for quashing the compulsory purchase order. The order on the face of it was valid, and the lands to be acquired compulsorily were admittedly needed for the purpose of effecting a desirable improvement of the by-pass, which was within the powers entrusted to the Minister. In any event, however, s. 6 (3) of the Trunk Roads Act, 1936, enabled the Minister, where he considered it was expedient that any road across a trunk road should pass under or over the trunk road, to construct a bridge "under or over the trunk road." It was argued that that gave him no power to make any alteration of the trunk road. But even if that narrow construction of the powers conferred by that subsection were correct, the court considered that he had authority, apart from that subsection, to construct the proposed subway. Invested as he was by s. 3 with all the powers of a highway authority, he had full power also to construct new roads. The court could not say that the proposed subway was not an "improvement" within the meaning of the Act, and in any case the dual carriageways which were to be constructed under the Hook cross-roads were plainly "new roads." With regard to the second ground for objection, while it was plainly the duty of the Minister and his representatives to give to the public and those directly affected by his proposals the fullest information, and to explain clearly the purposes which he

had in view and how they would be achieved, and also the statutory or other authority under which they were made, the court was unable to see that anything which took place at the inquiry invalidated it in any sense, or to find anything in the conduct of the inquiry which led it to think that the compulsory purchase order should be quashed. The motion must be dismissed.

COUNSEL: *H. G. Robertson*, for the applicants; *H. P. J. Milmo*, for the Minister.

SOLICITORS: *Blundell, Baker & Co.; The Treasury Solicitor.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Probate, Divorce and Admiralty Division.

Ettenfield *v.* Ettenfield.

Langton, J. 10th May, 1939.

DIVORCE—DESERTION—SEPARATION AGREEMENT—BIRTH OF A CHILD TO RESPONDENT WIFE—EVIDENCE OF NON-ACCESS—RULE IN *Russell* v. *Russell* [1924] A.C. 687 NOT APPLIED.

These were defended cross-petitions. The first by the wife for restitution of conjugal rights. The second by the husband for dissolution of marriage on the ground of adultery.

The parties were married in 1926. In September, 1935, there was a separation agreement, the terms of which were set out in correspondence between solicitors and which, according to the husband, had been observed by both parties, but they continued to live in different parts of the same town, meeting only rarely and for the most part accidentally. In August, 1936, the wife filed her petition for restitution of conjugal rights. By his answer the husband pleaded just cause for leaving his wife, want of sincerity and the existence of the separation agreement. On 26th May, 1937, the wife gave birth to a child which was followed by the husband's petition based solely on that fact. The wife denied adultery and alleged that the birth of a child resulted from marital intercourse taking place in the Autumn of 1936. The husband requiring to prove evidence of non-access, the court heard arguments as to whether he was precluded from doing so by the decision in *Russell* v. *Russell* [1924] A.C. 687.

LANGTON, J., in giving judgment, said that the courts had recognised what might loosely be termed exceptions to the rule in *Russell* v. *Russell, supra*, where parties had obtained a judicial separation, and were living apart by virtue of a decree properly so obtained, the rule had no application. Indeed there was a presumption that an infant, born to the wife in such a case, was illegitimate. *St. George's* v. *St. Margaret's, Westminster (Parishes of)* (1706), 1 Salk. 123; *Hetherington* v. *Hetherington* (1887), 12 P.D. 112, 114. Where the parties were living apart under a separation deed, the rule had also been held not to apply in *Mart* v. *Mart* [1926] P. 24, which had been approved by a divisional court in *Stafford* v. *Kidd* [1937] 1 K.B. 395. Did the fact that the agreement to live apart was not enshrined in a deed constitute a distinction which would bring the present case within the rule in *Russell* v. *Russell, supra*, and outside the circumstances of *Mart* v. *Mart, supra*? It was to be noted that the suggestion of dispensing with a formal agreement came, in the first place, from the wife's solicitors. The terms of the agreement had been faithfully carried out by the husband. His lordship referred to *Collis* v. *Collis and Thomas* (1933), 77 SOL. J. 573, and said that he had there pointed out that it would be necessary, in order to raise a point of non-access under an oral agreement, that the agreement should be established beyond doubt and question. In the present case he found that the agreement was both entered into and acted upon. The nearest thing to anything approaching a statement of judicial opinion upon the point of law was that by Hill, J., in *Rimmer* v. *Rimmer* (1930), 46 T.L.R. 624, but as Hill, J., there, might just as well have been referring to an agreement by deed as to an agreement unaccompanied by a deed, he, his lordship, could not accept that dictum as a sure guide. His lordship, after referring to passages in the speeches in *Russell* v. *Russell, supra*, and to the further exception to the rule where parties were living apart under a magistrates' separation order, as in *Andrews* v. *Andrews and Chalmers* [1924] P. 255, accepted the reason for the principle underlying the rule as given by Lord Halsbury in *The Poulett Peerage Case* [1903] A.C. 395, at p. 399—"... as regards the rule which I think most wisely and properly protects the sanctity of married intercourse; and forbids it to be inquired into in any court of law." The exceptions which had been admitted to or grafted on the rule then fell into logical sequence. Where there had been judicial intervention the sanctity of the conjugal relation had already been invaded, if not abolished. Nor could very special sanctity be claimed for a conjugal relation which the parties had agreed to renounce. Further, there was not any special magic attributable to a deed. It was a convenient method of expressing a binding agreement in solemn and enduring terms. His lordship, on reviewing the evidence, said that the husband had convinced him that at no time after he parted from his wife in 1935 did he have intercourse with her. He was, accordingly, entitled to a decree *nisi* in his suit and any other questions in issue between the parties would not require to be further debated.

COUNSEL: *John Latey*, for the wife; *Lord Drogheda*, for the husband.

SOLICITORS: *Boxall & Boxall*, for *Woosnam & Co.*, Blackpool; *Gregory, Rowcliffe & Co.*, for *J. Ogden Hardicker, Hanson & Co.*, Manchester.

[Reported by J. F. COMPTON-MILLER, Esq., Barrister-at-Law.]

Societies.

Law Association.

The monthly meeting of the Directors was held on the 5th June, Mr. Ernest Goddard in the chair. The other Directors present were Mr. E. Evelyn Barron, Mr. Guy H. Cholmeley, Mr. G. D. Hugh-Jones, Mr. C. D. Medley, Mr. Frank S. Pritchard, Mr. John Venning, Mr. William Winterbotham, and the Secretary, Mr. Andrew H. Morton. A sum of £1,077 was voted in renewal of allowances to pensioners and grants amongst twenty-four applicants, and other general business transacted.

Parliamentary News.

Progress of Bills.

House of Lords.

Access to Mountains Bill.
In Committee. [6th June.

Administration of Justice (Emergency Provisions) Bill.
Read Third Time. [6th June.

Administration of Justice (Emergency Provisions) (Scotland) Bill.
Read Second Time. [6th June.

Adoption of Children (Regulation) Bill.
Amendments reported. [7th June.

Charities (Fuel Allotment) Bill.
Reported without Amendment. [6th June.

Local Government Amendment (Scotland) Bill.
Read First Time. [7th June.

London County Council (General Powers) Bill.
Reported with Amendments. [6th June.

London County Council (Improvements) Bill.
Committed. [6th June.

London Government Bill.
Committed. [25th May.

Ministry of Health Provisional Order Confirmation (Bacup) Bill.
Committed. [6th June.

Ministry of Health Provisional Order Confirmation (North Lindsey Water Board) Bill.
Committed. [6th June.

Ministry of Health Provisional Order Confirmation (Wembley) Bill.
Committed. [6th June.
Ministry of Health Provisional Order (Hailsham Water) Bill.
Read First Time. [6th June.
Ministry of Health Provisional Order (Luton Water) Bill.
Read First Time. [6th June.
Ministry of Health Provisional Order (South Kent Water) Bill.
Read First Time. [6th June.
Sea Fisheries Provisional Order (Tollesbury and West Mersea) Bill.
Read Second Time. [6th June.
Sheffield Corporation Bill.
Read First Time. [25th May.
Southern Railway Bill.
Read First Time. [25th May.
Tiverton Corporation Bill.
Read First Time. [25th May.
Unemployment Insurance Bill.
Read First Time. [7th June.
Water Undertakings Bill.
Read Second Time. [6th June.
West Gloucestershire Water Bill.
Read Third Time. [6th June.
Wheat (Amendment) Bill.
Read First Time. [7th June.

House of Commons.

Agriculture Development Bill.
Read First Time. [6th June.
Air Ministry (Heston and Kenley Aerodromes Extension) Bill.
Read Second Time. [6th June.
Bognor Gas and Electricity Bill.
Read Second Time. [5th June.
Droitwich Canals (Abandonment) Bill.
Read Second Time. [5th June.
Jarrow Corporation Bill.
Read Third Time. [7th June.
Local Government Amendment (Scotland) Bill.
Read Third Time. [6th June.
Medway Conservancy Bill.
Read Second Time. [5th June.
Merthyr Tydfil Corporation Bill.
Read Second Time. [5th June.
Metropolitan Water Board Bill.
Read Second Time. [5th June.
Ministry of Health Provisional Order (Eastern Valleys (Monmouthshire) Joint Sewerage District) Bill.
Read Second Time. [7th June.
Ministry of Health Provisional Order (Luton Water) Bill.
Read Third Time. [5th June.
Ministry of Health Provisional Order (South Kent Water) Bill.
Read Third Time. [5th June.
North-West Midlands Joint Electricity Authority Provisional Order Bill.
Read Second Time. [7th June.
Stalybridge Hyde Mossley and Dukinfield Transport and Electricity Board Bill.
Amendments Considered. [5th June.
Tynemouth Corporation Bill.
Amendments Considered. [5th June.
Unemployment Insurance Bill.
Read Third Time. [6th June.
Wheat Amendment Bill.
Read Third Time. [6th June.

Legal Notes and News.

Honours and Appointments.

The King, on the recommendation of the Lord Chancellor, has approved the appointment of Mr. HERBERT ST. GEORGE PEACOCK as Deputy Chairman of the East Suffolk Quarter Sessions. The appointment is in accordance with the provisions of the Administration of Justice (Miscellaneous Provisions) Act, 1938, and is to take effect from 22nd May.

Mr. HAROLD HEWITT, solicitor, of Bishop Auckland, has been appointed Assistant Solicitor to the Tynemouth Corporation as from the 19th June. Mr. Hewitt served his articles with Mr. Ernest B. Proud, Clerk to the Bishop Auckland Urban Council, and was admitted a solicitor in 1938.

Notes.

Lord De La Warr, President of the Board of Education, has accepted honorary membership of the Incorporated Society of Auctioneers and Landed Property Agents.

Mr. Justice Cassels was entertained recently by the governors, masters and old boys of Westminster City School, of which he is an old scholar, to celebrate his appointment as a Judge of the High Court.

Applications are being invited by the Incorporated Council of Law Reporting for England and Wales for appointment to the post of Editor of the Law Reports, which falls vacant at the end of the current year. A notice appeared in *The Times* under "Public Appointments" last Wednesday.

A meeting of the agricultural members of The Auctioneers' and Estate Agents' Institute will be held at Elmer House, Grantham, on Friday, the 16th June. Professor J. A. Hanley, A.R.C.S., Ph.D., of King's College, Newcastle-on-Tyne, will deliver a paper entitled: "The Husbandry and Management of the Poorer Lands of England."

The Home Secretary has appointed Sir Harold S. Morris, K.C., to hold an inquiry into an application by the flax industry for exemption from the Factories Act, 1937, under which the hours of boys and girls under sixteen will be reduced from forty-eight to forty-four a week after 1st July next. The inquiry will be opened on 28th June, in Edinburgh.

To commemorate the retirement from the Bench of His Honour Barnard Lailey, K.C., and in recognition of the happy relations between him and the solicitors of Hampshire during the long period of his appointments as County Court Judge and Chairman of Quarter Sessions, a presentation of plate was made to him at his residence by the Hampshire Law Society last Tuesday.

The Liverpool Recorder, Mr. E. G. Hemmerde, K.C., at Liverpool City Quarter Sessions last week, says *The Times*, said that once more the question had arisen in some of the courts in this country as to how women should come to court so far as dress was concerned. He wished all the officials there having anything to do with the court to understand, once and for all, that all women, whether serving on juries or as witnesses, or coming as spectators, might dress as they liked in that court. There was no sort of historical or religious basis for the absurd business of telling women that they had to wear hats in court. "More than one bishop has commented on the absurdity of suggesting that they should be covered in church. It is merely a relic of the days long since passed when women were considered as inferior to men," the Recorder added.

COMMITTEE ON POOR PERSONS RULES.

The Lord Chancellor has appointed The Honourable Mr. Justice HODSON (Chairman), E. ST. J. BAMFORD, Esquire, C.M.G., NORMAN BIRKETT, Esquire, K.C., Sir EDMUND COOK, C.B.E., THE EARL OF DROGHEDA, C.M.G., L. S. HOLMES, Esquire, LL.M., Sir WALTER MONCKTON, K.C.V.O., K.C., and Sir CLAUD SCHUSTER, G.C.B., C.V.O., K.C., to be a Committee to consider the administration and working of the Poor Persons Rules and to report whether in the present circumstances any, and if so, what, amendment of them is necessary or desirable.

Wills and Bequests.

Mr. John Beckwith, solicitor, of Ashley Place, S.W., and of Lincoln's Inn, left £47,627, with net personalty £46,902. He left £1,200 to the Dean and Chapter of Westminster Abbey, the income to be applied towards enabling one or more of the Choristers studying at Westminster Abbey Choir School to proceed to a place of higher education; leasehold houses in East Street, Walworth, to Wellington College Mission; £500 to the London Hospital; £500 to the Great Northern Central Hospital; and £100 each to the Church Army, Dr. Barnardo's Homes, Cancer Hospital, Victoria Hospital for Children, Chelsea, Hampstead General Hospital, Universal Beneficent Society, Solicitors' Benevolent Association, Clergy Orphan Corporation, Friends of the Clergy Corporation, Friends of the Poor Association and Surgical Aid Society.

Mr. Samuel Peter Bevon, solicitor, of Wrexham, left property of the gross value of £31,825, with net personalty £29,055. He left £1,000 to the Wrexham War Memorial Hospital, if not given in his lifetime, to endow a bed in memory of his wife; and the residue of the property equally between Wrexham War Memorial Hospital, British Empire Cancer Campaign, Dr. Barnardo's Homes, and the National Institute for the Blind.

Court Papers.

Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

DATE.	EMERGENCY ROTA.	APPEAL COURT No. 1.	MR. JUSTICE FARWELL.
	Mr.	Mr.	Mr.
June 12	Jones	Ritchie	Reader
,, 13	Ritchie	Blaker	Andrews
,, 14	Blaker	More	Jones
,, 15	More	Reader	Ritchie
,, 16	Reader	Andrews	Blaker
,, 17	Andrews	Jones	More

	GROUP A.		GROUP B.	
	MR. JUSTICE BENNETT.	MR. JUSTICE SIMONDS. Non-	MR. JUSTICE CROSSMAN.	MR. JUSTICE MORTON. Non-
DATE.	Witness.	Witness.	Witness.	Witness.
	Mr.	Mr.	Mr.	Mr.
June 12	Jones	Blaker	More	Andrews
,, 13	Ritchie	More	Reader	Jones
,, 14	Blaker	Reader	Andrews	Ritchie
,, 15	More	Andrews	Jones	Blaker
,, 16	Reader	Jones	Ritchie	More
,, 17	Andrews	Ritchie	Blaker	Reader

TRINITY SITTINGS, 1939.

COURT OF APPEAL.

One Division of the Court will hear Interlocutory and Final Appeals from the Chancery Division, Palatine Appeals and Appeals from the Chancery Division (in Bankruptcy).

Two Divisions of the Court will hear Interlocutory and Final Appeals from the King's Bench Division until further notice. Later in the Sittings Appeals re The Workmen's Compensation Acts, and County Court Appeals will be heard.

Admiralty Appeals will be heard in Appeal Court II on 19th June.

HIGH COURT OF JUSTICE.

CHANCERY DIVISION.

Before Mr. Justice FARWELL.

At the beginning of the Sittings Mr. Justice FARWELL will sit for the disposal of the Non-Witness List.

Mondays—Bankruptcy Business.

Bankruptcy Judgment Summonses will be taken on Mondays, 19th June and 10th July.

Bankruptcy Motions will be taken on Mondays, 12th June and 3rd July.

A Divisional Court in Bankruptcy will sit on Mondays, 26th June and 17th July.

GROUP B.

Tuesdays ... Motions, Short Causes, Petitions, Procedure Summonses, Further Considerations and Adjourned Summonses.
Wednesdays Adjourned Summonses.
Thursdays .. Adjourned Summonses.
Fridays..... Motions and Adjourned Summonses.

GROUP A.

Before Mr. Justice BENNETT.
(Witness List.)

Mr. Justice BENNETT will sit daily for the disposal of the List of Witness Actions.

Before Mr. Justice SIMONDS.
(Non-Witness List.)

Mondays .... Chamber Summonses.
Tuesdays ... Motions, Short Causes, Petitions, Procedure Summonses, Further Considerations and Adjourned Summonses.
Wednesdays Adjourned Summonses.
Thursdays .. Adjourned Summonses.
Lancashire Business will be taken on Thursdays, 15th June, 6th July and 20th July.
Fridays..... Motions and Adjourned Summonses.

GROUP B.

Before Mr. Justice CROSSMAN.
(Witness List.)

Mondays ... Companies (Winding up) Business.
Tuesdays ... } The Witness List.
Wednesdays }
Thursdays .. }
Fridays .... }

Before Mr. Justice MORTON.
(Non-Witness List.)

Mondays ... Chamber Summonses.

Mr. Justice MORTON will sit as Appeal Tribunal under the Patents and Designs Acts, 1907 to 1938 on Tuesdays, Wednesdays, Thursdays and Fridays until further notice.

THE COURT OF APPEAL.

A list of Appeals for hearing, entered up to Friday, 26th May, 1939.

FROM THE CHANCERY DIVISION.

(Final List.)

Re Crosby, dec Gill v Crosby
J Miller's Letter Patent 430660 Re Patents & Designs Acts, 1907-1932 (fixed June 6)
The Westhoughton Coal & Cannel Co Ltd v The Wigan Coal Corporation Ltd
Armour v Liverpool City Corporation (not before July 1)
Re Wester Wemyss, dec Tilley v Wester Wemyss (pt hd)
Bradford Third Equitable Benefit Building Society v Borders
Re Foster, dec Gellatly v Palmer
Re Shoreham-by-Sea U.D.C. and Easter's Contract Re Law of Property Act, 1925
Draper v Trist
Re Cooper, dec Neve-Foster v National Provincial Bank Ltd
Crane v Hegeman-Harris
Maturin v North
J & S Eyres Ltd v John Grundy Ltd
Maynards Ltd v Adams
Re Brooke's Will Trusts Sullivan v Elgood
Frazier v Hunstone

(Interlocutory List.)

Holt v The North Lincs Gravel Co Ltd
Landi, dec Giorgi v Navani

FROM THE PROBATE AND DIVORCE DIVISION.

(Final List.)

Williams v Williams
King v King & Coleman
Pardy v Pardy
Graham-White v Graham-White and Rogers
Bennett v Bennett (s.o. not before 14 days after judgment given in No. 1)
The Public Trustee v Davies

FROM THE KING'S BENCH DIVISION.

(Final and New Trial List.)

The British & Colonial Lead Co Ltd v Debbaudt (not this Sittings, l.a.r.)
Hogan v The Pacific Steam Navigation Co (s.o. for P.P. Appln.)
Paine & Co Ltd v St Neots Gas & Coke Ltd
Same v Same
Eastwood v Pearlberg
Same v Same (original motion)
Kirk & Kirk Ltd v Universite de Lille
Callard v Callard & Bowser Ltd
Jackson v Charles Dodd & Co
Re Arbitration Acts, 1889-1934 Metropolitan Electric Supply Co Ltd v Surrey (North Western) Area Assessment Committee
Re Same Same v County Valuation Committee of the County of Buckingham (not before July 3)
Coles v Enoch
Marengo v Kark
White v J & F Stone Lighting & Radio Ltd
Cuthbertson v London Passenger Transport Board
Same v Same
Taylor v Leicester City Council
Frenette v Smee
Gilt Edge Safety Glass Ltd v Baillie
Bradley v Midland Bank Executor & Trustee Co Ltd
Twigden v Slient Cannell Co Ltd
MacMichael v The Commissioner of Police for the Metropolis
The Owners of the s.s. "Kyno" her Cargo and Freight v Quebec Salvage & Wrecking Co Ltd
Re The Housing Act, 1936 Re The Ripon (Highfield) Housing Confirmation Order, 1938 White & Collins v The Minister of Health
Osborn v Montgomery
Probert v British Vacuum Cleaner & Engineering Co Ltd
Holloran-Williams v Woking Urban District Council
Mills Conduit Investments Ltd v Skelt
Le Grand Sutcliffe & Gell Ltd v Bishirgian
Griggs v Petts
Hughes v Davies
Evans v Liverpool City Corporation
Buckley v The British Medical Association
Excelsior Film Productions Ltd v Hackett
Sefton v Hazelhurst & Sons
Entwistle v Verulam
O'Bryen v Metro-Goldwyn Mayer British Studios Ltd
Angfartygs A/B Halfdan v Price & Pierce Ltd
Cooper v Luxor (Eastbourne) Ltd
Perkins v Hugh Stevenson & Sons Ltd
Weyman v Associated Newspapers Ltd
Luke v Wilcock
Morley v The Staffordshire County Council
Hutchinson v Cross
Abraham v Fairbank
Davis v Foots
Knight v Plucknett
Ker v O'Brien
Harmer v Cornford
Hewitt v Bonvin
Barr v Grime
Watson v J R Stewart & Co Ltd
Selwood v The Townley Coal & Fireclay Co Ltd
Rimmer v H Littlewood Ltd
Eve v Coxes Lock Milling Co Ltd
Allsop v Fairfield Haulage Co Ltd
Edwards v Conway Borough Council
Short Bros (Rochester and Bedford) Ltd v Minney
Kent v East Suffolk Rivers Catchment Board
Hoffman v Airspeed (1934) Ltd
Clark v Smith
O'Brien v Bennetts Haulage Warehousing and Wharfage Co Ltd
Burton v The Road Transport & General Insurance Co Ltd
Macartney v The Daily Telegraph Ltd
Mackenzie v British Indestructo Glass Ltd
Same v Same
Chadwick v Wootton
Horrocks v Mottershead
Mackay v Granby Hotel Ltd
Compagnie Primera de Navigaziona Panama v Compania Arrendataria de Monopolio de Petroleos S.A.
Gilbert Films Ltd v Guaranteed Pictures Company Incorp
Vowles v Armstrong Siddeley Motors Ltd
Petherick v Miller
Parry v The Aluminium Corporation Ltd
Bassett v Wrensons Ltd
Souza v Keel
O'Neil v Lane
Joyce v Knox
Pool Shipping Co Ltd v London Coal Company of Gibraltar Ltd
Associated Cinematograph Theatres Ltd v Provincial Cinematograph Theatres Ltd
Rodgers v Park Gate Iron & Steel Co Ltd
The King v The Recorder of Bolton Exparte McVittie
Leigh v Arthur E Eves & Jones (a firm)
Banco Central de Chile v The Midland Bank Ltd
Stimpson v Standard Telephones & Cables Ltd
Newstead v London Express Newspapers Ltd
In the Matter of Charles Bullock, an Infant
Norwood v Leeds Industrial Co-operative Society Ltd
Smith v William Davies & Son (a firm)
Sockochinsky v Willan
Crowther v Reno Valet Service Ltd
Moncrieff v Coit
Moore v Guest, Keen & Nettlefolds Ltd
Tindley v Firestone Tyre & Rubber Co Ltd
A/S Tank of Oslo v Agence Maritime L Strauss of Paris
Whitehead v Troy Laundry Company (Ealing) Ltd

(Interlocutory List.)

Thompson v Joseph
Cromwell Property Investment Company Limited v Hucks

(Revenue Paper—Final List.)

The United Steel Companies Ltd v Cullington (HM Inspector of Taxes)

FROM COUNTY COURTS.

Feinauer v Bartlett
Lloyd v Cavendish
Stone v Butteris
Barsby v Doncaster Amalgamated Collieries Ltd
John Staff & Sons Ltd v Kera
Trelawny v Goldsworthy
Rowan v Universal Insurance Co Ltd
Mack v Webb
Graham v R C Farley & Co Ltd and Rees (claimant)
Barry Sports Ltd v Crawford Gowns Ltd
Rae v Wolfe
Central Advance & Discount Corporation Ltd v Marshall
Hickman v Potts
Re Rent & Mortgage Interest Restriction Acts, 1920-1938 Holt v Dawson
Henderson v Clifford Watmough & Co
Rynhold v Phillips
Marmorel v Leigh
Smith v Harris
Same v Same
Jeffries v Borough of Brighton
Kirby v Glenarda Clothes Ltd
Taylor v Taylor
His Majesty's Postmaster-General v Wadsworth
Simons v German
Madeleine Vionnet et Cie v Wills
Wells v Batty
Richardson v Hirst
Brigstocke v Corse-Scott
Elliot v Galloway
F G & F H Wiles v Fane and Fane Mills & Co
Schardt v Smith
Hedges v King
Messum v Fisher
Black v Chaproniere
Deacon v Baldwin
United Dominions Trust Ltd v Tucker

RE THE WORKMEN'S COMPENSATION ACTS.

The Owners of the Ship "Norman" v Wilde
The Owners of the Ship "King's Grey" v Ryall
Burrows v Richard Evans Co & Ltd
Cairns v G & N Wright Ltd
Coouer v Martin Van Straaton & Co
O'Brien v George Wimpey & Co Ltd
Cain v Shell Mex & B P Ltd
Lucas v HM Postmaster-General

FROM THE ADMIRALTY DIVISION.

(Final List.)

(*With Nautical Assessors.*)

"Hurunui" 1938 Fo 149 May Florence Foyster (Widow) as personal representative of Bernard William Foyster, dec and suing on behalf of herself and Dudley John Foyster, Evelyn Joyce Foyster and Geoffrey Henry Foyster, Infants v The New Zealand Shipping Co Ltd
"La Plata" 1939 M No 86, Fo 8 Anthony Marmarinos v The Owners of s.s. or Vessel "La Plata"
"Canada" 1937 H No 3370 Fo 251 The Owners of Motorship or Vessel "Hoegh Hood" v The Owners of Motorship or Vessel "Canada"

(Interlocutory List.)

"Amazone" 1939 H No 1036 Fo 106 Hemeleers-Shenley v The Motor Vessel "Amazone" and all persons claiming an interest therein

Standing in the "ABATED" List.

RE THE WORKMEN'S COMPENSATION ACTS.

Adams v Horace V Clogg Ltd (s.o. generally June, 1938)
McGregor v Gow & Hollands Ltd (s.o. generally March 30, 1939)

FROM COUNTY COURTS.

Pullen v Stell (s.o. generally liberty to apply to restore Feb. 28, 1939)

FROM THE CHANCERY DIVISION.

(Final List.)

Re Heaven Indenture de Arellano v Heaven (s.o. generally liberty to restore May 5, 1939)

HIGH COURT OF JUSTICE—CHANCERY DIVISION.

There are Two Lists of Chancery Causes and matters for hearing in Court. (I) Adjourned Summonses and Non-Witness Actions; and (II) Witness Actions, every proceeding being entered in these Lists without distinction as to the Judge to whom the proceeding is assigned. During the Sittings, warning will be given of proceedings next to be heard before each of the five Judges. Applications in regard to a "warned" matter should be made to the Judge before whom it is "warned."

Applications in regard to a proceeding which has not been "warned," should usually be made to the senior of the two Judges taking the list in which the proceeding stands.

Motions, Short Causes, Petitions and Further Considerations will be taken by the Judge taking the Non-Witness List who belongs to the group to which the proceeding is assigned.

GROUP A.—Mr. Justice BENNETT and Mr. Justice SIMONDS.
GROUP B.—Mr. Justice CROSSMAN and Mr. Justice MORTON.

Mr. Justice FARWELL will deal with the Non-Witness work in Group B until further notice.

The Adjourned Summons and Non-Witness List will be taken by Mr. Justice FARWELL and Mr. Justice SIMONDS.

The Witness List will be taken by Mr. Justice BENNETT and Mr. Justice CROSSMAN.

Motions, Short Causes, Petitions and Further Considerations in matters assigned to Judges in Group A will be heard by Mr. Justice SIMONDS.

Motions, Short Causes, Petitions and Further Considerations in matters assigned to Judges in Group B will be heard by Mr. Justice FARWELL until further notice.

Companies (Winding up), Liverpool and Manchester District Registries and Bankruptcy, business will be taken as announced in the Trinity Sittings Paper.

Set down to 26th May, 1939.

Mr. Justice FARWELL.

For Judgment.

Non-Witness List.

Re Gunther's Will Trusts Alexander v Gunther

For Hearing.

Assigned Matter.

Re Application by B B Harris Re Application by J G Tilley Re Law of Property Act, 1925

Retained Matters.

Witness List.

Provender Millers (Winchester) Ltd v Southampton County Council (fixed June 27)

Non-Witness List.

Re Richardson, dec Jackson v Holmes (s.o. generally, liberty restore

On Tuesday, June 6th, the following will be in the list:—

Motions.

Retained Matters.

Witness List.

Thorsch v Lazard Bros & Co Ltd
Thorsch v Royal Bank of Scotland

Mr. Justice BENNETT and Mr. Justice CROSSMAN.

Witness List.

Before Mr. Justice BENNETT.

Retained Matters.

Witness List.

Ellis v Ellis (pt hd)
Bradford Third Equitable Benefit Building Society v Marriott

Procedure Summons.

Eeles v Levermore (pt hd) (s.o. liberty to apply to restore)

Companies Court.
Adjourned Summons.

Re Cleadon Trust Ltd Remove Liquidator (Application of Robert Creighton) (pt hd)

On Tuesday, June 6th, the following will be in the List:—

Further Consideration.

Re Emberton, dec Davies v Emberton

In Chambers.

Re Tavistock's Settlement Russell v Lawrence

The next to be heard are:—

Witness List.

Lowndes v Hadfields Ltd (pt hd)
Re Williams, dec Spencer v Williams
Orr v Odeon Cinema Holdings Ltd (not before June 10)
Francombe v Dolton Bournes & Dolton Ltd

Before Mr. Justice CROSSMAN.

Retained Matter.
Non-Witness List.

Re Hill's Will Trusts Public Trustee v Folds (s.o. generally, liberty apply to restore)

At the beginning of the Sittings, the following will be in the List:—

Witness List.

Re W Dederich Ltd Re The Companies Act, 1929 Companies Court
Ballantyne v Baines

Retained Matters.
Non-Witness List.

Re Radcliffe, dec Westminster Bank v Radcliffe (restored)
Re Wolson, dec Wolson v Jackson (restored)

Assigned Matter.

Re W L J Warren (an infant) Re Guardianship of Infants Acts, 1886–1925

Witness List.

Gilbert v Levison
Ingram v Ingram
Brady v Lloyds Bank Ltd
Lee v Topley
Stracey-Clitherow v Barrington

Companies Court.
Petitions.

Arthur W North & Co Ltd (to wind up—ordered on May 10th, 1937, to s.o. generally)
Assurance Franco Asiatique Societe Anonyme (same)
Harold Muir & Co Ltd (same)
Aldenham House Elstree Ltd (same)
Ismay Zeros Ltd (same)
Morrell Estates and Development Co Ltd (same)
L & C Moss Ltd (same)
Marshall and Nelken Ltd (same)
Percy Harvey (Sales) Ltd (same)
Model Hotels Ltd (same)
A W Wood & Co Ltd (same)
Clifford Dawson Ltd (same)
Pearl Lingerie Ltd (same)
British Goldfields (No. 1) Ltd (same)
Roman Deep Holdings Ltd (same)
Nunn's Estates Ltd (same)
London Radio Development Services Ltd (same)
J Scolnick Ltd (same)
Hoarding Builders Ltd (same)
Architectural Constructional and Electrical Utilities Ltd (same)
Whitlock's Ltd (same)
Leonards Stores Ltd (same)
Corporate Equitable Property Society Ltd (same)
Whayman Hotels Ltd (same)
F G Doe Ltd (same)
J C Collins (Transport) Ltd (same)
E Dyson and Son Ltd (same)
Malcom Owen Ltd (same)
Unicraft Ltd (same)
Beryl Morne Ltd (same)
C Vessey & Co Ltd (same)
Bernel Ltd (same)
Madison (Chemists) Ltd (same)
Paul Ruinart (England) Ltd (to confirm reduction of capital)
Fred Burn Ltd (same)
Dale Forty & Company Ltd (same)
Brooks Wharf & Bull Wharf Ltd (same)
Eden Park Estate Ltd (same)
John Stanley Ltd (same)
Thomas Hedley & Co Ltd (same)
Lenygon & Morant Ltd (same)
O Roberts & Sons Ltd (same)
Price Parsons & Co Ltd (same)
William Cave & Son Ltd (same)
Strick Gorchs & Co Ltd (same)
Charles Bodega & Sons Ltd (same)
Tom Browne & Co (Nottingham) Ltd (same)
W H Smith & Hook Knowles Ltd (same)
Mayors' Field Association (to confirm alteration of objects)
Ashford (Kent) High School for Girls Ltd (same)
Camp Bird Ltd (same)
Bantam Products Ltd (same)
Border Breweries (Wrexham) Ltd (to confirm reduction of capital redemption reserve fund)
John Mackintosh & Sons Ltd and A J Caley & Son Ltd (to sanction scheme of arrangement and confirm reduction of capital)

Amalgamated Anthracite Collieries Ltd (same)
Smeetons Coaches Ltd (to restore name to register)

Motions.

Kings Cross Land Co Ltd (ordered on June 26, 1934, to s.o. generally—liberty to apply to restore)
Flactophone Wireless Ltd (ordered on July 10, 1934, to s.o. generally)
Una Star Laundry Ltd (ordered on May 9, 1938, to s.o. generally—liberty to restore)
Century Refrigeration Co Ltd
Isobel Baker Ltd

Adjourned Summonses.

Marina Theatre Ltd (Application of F H Cooper—with witnesses—ordered on May 10, 1933, to s.o. generally—liberty to apply to restore)
W Smith (Antiques) Ltd (Application of Liquidator—with witnesses—ordered on Dec 8, 1932 to s.o. generally)
Pictos Ltd (Application of Liquidators—with witnesses—ordered on March 29, 1935 to s.o. generally—liberty to apply to restore)
Bottlers and General Engineers Ltd (Application of Harold Cecil Gains—with witnesses—ordered on June 17, 1937 to stand over generally—liberty to apply to restore)
Cleadon Trust Ltd (Application of Robert Creighton—ordered on April 12, 1938 to s.o. generally)

Mr. Justice BENNETT and Mr. Justice CROSSMAN.

Witness List.

Madlener v Herbert Wagg & Co Ltd (s.o. for security)
Fox v Duboff (s.o. for amendment)
Radium Utilities Ltd v Humphris (s.o. for security)
Nathan v Walker (s.o. for Attorney-General)
Cline v London Express Newspaper Ltd (not before Michaelmas Sittings)
Re Niers Letters Patent Re Patents & Designs Acts, 1907–1932 (not before November 1)
Re Same (not before November 1)
New Pavilion (Gillingham) Ltd v Munday (s.o. for security)
The "Triplex" Safety Glass Company Ltd v Gilt Edge Safety Glass Ltd (not before Michaelmas Sittings)
Re Blue Bell Motors Ltd Re The Companies Act, 1929 (not before July 6)
Cowan v Hendon Borough Council
Re Solicitors Act, 1932 Re Two Solicitors
Johnson v Fairbairn
Helman v Nelkin
Green v Elcock
North West London Estates Co Ltd v Odeon (Sudbury) Ltd
Same v Same
Webb v Frank Bevis Ltd
Sullivan v Whitnall
Phillips v Williams (not before July 20)
Great Western Rly Co v Staplehill Sand & Gravel Co Ltd
John Macmillan (London) Ltd v Douglas Wiseman & Co (a firm)
Wolfe v Edwards (not before June 21)
Newton (Porthcawl) Estate Company Ltd v Porthcawl Urban District Council (not before June 21)
Re Price dec Price v Price
Drew v Freeman
Taylor v Sheppard
Swift v Odeon Cinema Holdings Ltd
Re Wilson, dec Wilson v Mitchell
Abbey Road Building Society v Roberts
Tarbutt v Yarworth-Jones
Macleans Ltd v Pharmetics Ltd
E Boydell & Co Ltd v Caton
Re Allen dec Nunn v Allen
Pathe Cinema v Coronet Camera Co
Knight & Co Ltd v Collins Confectionery Ltd
Buckingham v Sun Life Assurance Company of Canada
Hamilton v Newall
The Cravenette Co Ltd v S Lubin & Son Ltd
Francombe v Dolton
Newcastle City & County Council v Granville Court Garage (Newcastle) Ltd
Miglio v Isherwood Foster & Stacey Ltd
Alfred & Samson Ltd v Phillips
Chown v Rogers
Newman v Smith
Greig v Parkin
Johnson v Arthurworry
Hingley v Whitworth
Zoob v G Wiggins Ltd
The Burnham & Berrow Golf Club Ltd v Gulliver
Re Morgan's Settlement Morgan v Edwards
Clarke v Lloyds Bank Ltd
Cope v London Passenger Transport Board
Guy v. Clifford Associated Hotels Ltd
Cords v F E Tranter & Co Ltd
Farra v Mercer
Jefton Entertainments Ltd v Jones
Lock v Abescester Ltd
Lee-Norman v Collier
Re Tonge, dec Lee-Norman v Tonge
Tonge v Tonge
Tonge v Spurrell
Lee v Lee
Same v Same
Martin v Westley
Slaters & Bodega Ltd v Silver
Le Strange v Pettefar
Stanton v Hay
The Leeds Provincial Building Society v Leigh
Hobbins v C Czarnikow Ltd
Ransom v Fisher
Clarke v Brooke Lewis Estates Ltd
Eaves v Eaves
Batchelor v Evans
Griffiths v Lane
Elkan v Elkan
Wilmot v Eaglestone
Horn v Bulkeley
Delgoffe v Fader
Stephens v Snell
Marles v Wingard (M A) Ltd
Re Almond, dec Palmer v Almond
Holford v Watts
Re Booth & Fox Ltd Debenture Trust Deeds Edwards v Fox
Eastbourne Mutual Building Society v Hicks
Harrison v Hart
Garton v Leggatt
Williams v Lazarus
Perry v Muirheads (Builders) Ltd
John Carle Ltd v Hill
Bellamy v Nelson Borough Council
Collins v Masters
Same v Same
Same v Same
The St. Pauls Building Society v Myers
Edward Oakland & Co Ltd v Evans
Bernard Advertising Ltd v Garratt
Whatmough v Morris Motors Ltd
Bradford Dyers Association Ltd v Sharp
Long v Twentieth Century Cinemas Ltd
Berkeley & Young Ltd v Stillwell Darby & Co Ltd
North Eastern Trading Estates Ltd v The Dunstan Garesfield Collieries Ltd
Upsons Ltd v Jax Stores Ltd
Holme v Connor
The Temperance Permanent Building Society v Luck
Miclescu v Kroening
London General Insurance Co Ltd v Jewett
Stoneham v Fletcher
Samuel French Ltd v Sievier
Shenton v Tyler
Porter v S M Super Cinemas Ltd
Redesdale v Over-Seas League
Blaufus v Ball
The British Thomson-Houston Co Ltd v Tungstalite Ltd
Wood v Sparke (fixed June 19)
Handley Page Ltd v Curtiss Wright Corporation
Walkley v Walkley
Rogers v Hooley
Barker v Beeston
Carpenters Estates Ltd v Davies
Beadon v Clifford
Hotels & Restaurants Association of Great Britain v The British Hotels, Boarding and Apartment Houses Protection and Development Association Ltd
McEwan v Anglo-Scottish Trading Co Ltd
West Riding Worsted & Woollen Mills Ltd v Gaunt
The Benjamin Electric Ltd v Veritys Ltd
Same v Same
The Benjamin Electric Ltd v Veritys
Same v Same

Mr. Justice SIMONDS and Mr. Justice MORTON.

Non-Witness List.

Before Mr. Justice SIMONDS.

Assigned Matters.

Re Patents & Designs Acts, 1907–1938 Re Loffler's Letters Patent (s.o. liberty to amend and apply to fix a day)
Re Patents & Designs Acts, 1907–1938 Re Heron's Letters Patent No. 224288
Re Patents & Designs Acts, 1907–1938 Re Grove's Letters Patent No. 454088

Retained Matters.

Non-Witness List.

Re Salmonsen, dec National Provincial Bank Ltd v Neilson

Petitions.

Gumm v Hallett (s.o. generally liberty to amend and restore)
May v May

Further Consideration.

Re Sherrard Estates Ltd Brocke v The Company (fixed June 6)

Before Mr. Justice MORTON.

Retained Matters.

Non-Witness List.

Daponte v Schubert (pt hd)
Re Lamerton, dec Lamerton v Roberts
Re Harding's Vesting Deed Prideaux-Brune v Prideaux-Brune (pt hd)
Re Furness' Will Trusts Re Trustee Act, 1925 Furness v Burrell (s.o. generally)
Re Wimbush, dec Richards v Wimbush (s.o. generally liberty to restore)
Re Ward, dec Nickinson v Ward

Witness List.

Culverwell v The Equitable Life Assurance Society (pt hd s.o. liberty apply to restore)

NOTICE.

During Trinity Term, 1939, Mr. Justice MORTON will sit as Appeal Tribunal under the Patents and Designs Acts, 1907 to 1938, each day (excepting Mondays) until further notice.

Petition.

Re Astor's Settlement Trusts Re Trustee Act, 1893

Procedure Summonses.

Vernazza v Baburizza & Co Ltd
Re Holt, dec Holt v Provident Association of London Ltd

NOTICE.

During Trinity Term, 1939, Motions, Short Causes, Petitions and Further Considerations assigned to Mr. Justice MORTON will be heard by Mr. Justice FARWELL until further notice.

Mr. Justice SIMONDS and Mr. Justice MORTON.

Non-Witness List.

Re Skeffington Settlement Trusts Coutts & Company v Vere-Laurie (to be heard with witness action Vere-Laurie v Morgan)
Re Pontifex's Will Trusts Re Trustee Act, 1925 (restored)
Re Rose's Will Trusts Lloyds Bank Ltd v Butler (restored)
Re Humphris, dec Humphris v Humphris (s.o. June 7)
Re Seymour, dec Murray v Seymour
Re Payne's Declaration Re Payne, dec Poplett v H.M. Attorney-General
Re Same Same v Same
Re Elliotts Field Re Law of Property Act, 1925 Re Land Charges Act, 1925
Re Lant, dec Lant v Attorney-General
Re Carew, dec Channer v Francklyn
Re Hopkin's Will Trusts Miles v Lewis
Re Wittenberg, dec Gregory v Zimmermann
Re Rook's Will Trusts Morgan v Rook
Re Carrick, dec Fraser v Platts
Re Wyles, dec Midland Bank Executor and Trustee Co Ltd v Povey
Re Holder, dec Hardy v Haywood
Re Weightman, dec Thompson v Hemmingfield

HIGH COURT OF JUSTICE—KING'S BENCH DIVISION.

DIVISIONAL COURT LIST.

NOTICE.

The Solicitors for each party are requested to inform the Chief Clerk of the Crown Office, in writing, as soon as possible, as to the probable length of each case and the names of Counsel engaged therein.

For Argument.

The King v Council of the Administrative County of Essex Nisi for Certiorari for Scheme (ex parte Maldon Joint Hospital Board and ors
Tyas v Doncaster Amalgamated Collieries Ltd
Whiting v Garside
E Wells & Son Ltd v Sidery
Same v Same
Smith v Davis
Mortimer v Dain
Bullimore v Williamson
Wayling v Jermy
The King v Barry and ors
The King v JJ's for Stafford Motion for order of certiorari for order (ex parte Mayor &c of Stafford)
The King v The Army Council Motion for order of mandamus to mitigate or commute sentence (ex parte Sandford)
Medcalfe and anr v Hole
Stovell v Jameson
Middlesex County Council v Essex County Council
Beeland v Owens
Nugent v Phillips
London & Scottish Assce Corpn Ltd v Ridd
Stansfield v Assessment Committee for Stockport & Hyde Assessment Area
Owens v Timmins and anr
F A Prophet & Sons v Williams

SPECIAL PAPER.

Smith Stone & Knight Ltd v Lord Mayor &c of City of Birmingham
Wirral U.D.C. v County Borough Council of Wallasey and ors
Mayor &c of Birkenhead v Same and ors
The Spanish Government v Internationale Graan en Scheepvaart Maatschappij of Rotterdam
The London and Home Counties Joint Electricity Authority v Surrey County Valuation Committee and anr
Nelson and anr v Cookson and anr
Same v Same
Robinson David & Co Ltd v Vsesojoznoje Objedinenije Exportles
Court Line Ltd v Dant & Russell Inc
Hills v Co-operative Wholesale Soc Ltd

APPEALS UNDER THE HOUSING ACTS, 1925-1936.

Bethnal Green (Vyner Street, No. 6) Confirmation Order, 1937 Appeal of Trustees) of Mrs. Bates' Trust for the Moravians)
Same (Vyner Street, No. 7) v Same
Manchester (New Cross, No. 4) Confirmation Order, 1938 &c (Appeal of The Empress Brewery Co Ltd)
L.C.C. (Oxley Street, Bermondsey) Order, 1938 (Appeal of Dockhead Engineering Co)
County of London (Bethnal Green, No 1) Re-Development Plan (Appeal of Trustees of the Mrs. Bates Trust for the Moravians)
Shrewsbury (Golden Ball Farm &c) Confirmation Order, 1939 (Appeal of Williams)

MOTIONS FOR JUDGMENT.

Gen Accident Fire &c Assce Corpn Ltd v Foster
Aeschimann and anr v Roach
Sparling Cut Ltd v Bass

APPEAL UNDER THE PUBLIC WORKS FACILITIES ACT, 1930.

Eastbourne (Eldon Road School) Compulsory Purchase Order, 1938 (Appeal of the Chatsworth Co)

APPEAL UNDER THE NATIONAL HEALTH INSURANCE ACT, 1936.

Reference by the Minister of Health as to the Employment of Sub-Postmasters Remunerated by Scale Payment

REVENUE PAPER—Cases Stated.

Augustus J Dutch and The Commissioners of Inland Revenue
William Cooper Hobbs and H G L Hussey (HM Inspector of Taxes)
William H Boase and Commissioners of Inland Revenue
Caversham Park Estate Ltd and H O Hughes (HM Inspector of Taxes)
Hewitt Mudie & May and H O Hughes (HM Inspector of Taxes)
Hamstead Colliery (1930) Ltd and R J McLaughlin (HM Inspector of Taxes)
F W Mellows (HM Inspector of Taxes) and Major E H M Unwin
Commissioners of Inland Revenue and Lord Delamere
C W Walsh and J E Randall (HM Inspector of Taxes)
H O Hughes (HM Inspector of Taxes) and Hewett Mudie and May
H O Hughes (HM Inspector of Taxes) and Caversham Park Estate Ltd
Ipoh Tin Dredging Ltd and George Rand Simpson (HM Inspector of Taxes)
Brightman & Son and E Williams (HM Inspector of Taxes)
Lord Howard de Walden and G Beck (HM Inspector of Taxes)
The Corporation of Reigate and F J Cattermole (HM Inspector of Taxes)
Stanley Southern (HM Inspector of Taxes) and Angus Watson, George Foster Abell and Seaverns Andrew Cohen (as Executors of Percy Lionel Cohen, dec)
A E Mallandain Investments Ltd (In liquidation) and A J Shadbolt (HM Inspector of Taxes)
A G Harling (HM Inspector of Taxes) and Celynew Collieries Workmen's Institute
Mrs M M Gasque and The Commissioners of Inland Revenue
W C Northcott and The Commissioners of Inland Revenue
Shop Investments Ltd and S L Sweet (HM Inspector of Taxes)
Mrs E M Southern-Smith and J M Clancy (HM Inspector of Taxes)
Mrs Phyllis M Langford and The Commissioners of Inland Revenue

PETITIONS.

In the matter of the Finance Act, 1894 Section 10 and In the matter of Allen Fairhead, dec
In the matter of the Fines Act, 1833 and In the matter of a Petition by the Corporation of the City of London

ENGLISH INFORMATION.

HM Attorney-General and Jane Marjorie Oldham

BINDING OF NUMBERS.

Subscribers are reminded that the binding of the Journal, in the official binding cases, is undertaken by the publishers. Full particulars of styles and charges will be sent on application to The Manager, 29/31, Breams Buildings, E.C.4.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th June, 1932) 2%. Next London Stock Exchange Settlement, Thursday, 22nd June 1939.

	Div. Months.	Middle Price 7 June 1939.	Flat Interest Yield. £ s. d.	‡ Approximate Yield with redemption £ s. d.
ENGLISH GOVERNMENT SECURITIES				
Consols 4% 1957 or after	FA	106	3 15 6	3 10 11
Consols 2½%	JAJO	69xd	3 12 6	—
War Loan 3½% 1952 or after	JD	95¼	3 13 6	—
Funding 4% Loan 1960-90	MN	107¾	3 14 3	3 9 6
Funding 3% Loan 1959-69	AO	93⅞	3 4 0	3 6 8
Funding 2¾% Loan 1952-57	JD	92½	2 19 6	3 6 2
Funding 2½% Loan 1956-61	AO	86½	2 17 10	3 7 7
Victory 4% Loan Av. life 21 years	MS	107½	3 14 5	3 9 10
Conversion 5% Loan 1944-64	MN	109¼	4 11 6	2 15 3
Conversion 3½% Loan 1961 or after	AO	95¼	3 13 4	—
Conversion 3% Loan 1948-53	MS	98½	3 0 11	3 2 9
Conversion 2½% Loan 1944-49	AO	95½	2 12 4	3 0 7
National Defence Loan 3% 1954-58	JJ	96½	3 2 2	3 4 10
Local Loans 3% Stock 1912 or after	JAJO	81xd	3 14 1	—
Bank Stock	AO	322	3 14 6	—
Guaranteed 2¾% Stock (Irish Land Act) 1933 or after	JJ	77½xd	3 11 0	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	83xd	3 12 3	—
India 4½% 1950-55	MN	107	4 4 1	3 14 3
India 3½% 1931 or after	JAJO	86½xd	4 0 11	—
India 3% 1948 or after	JAJO	74xd	4 1 1	—
Sudan 4½% 1939-73 Av. life 27 years	FA	108	4 3 4	4 0 2
Sudan 4% 1974 Red. in part after 1950	MN	103½	3 17 4	3 12 3
Tanganyika 4% Guaranteed 1951-71	FA	105	3 16 2	3 9 8
L.P.T.B. 4½% "T.F.A." Stock 1942-72	JJ	102½xd	4 7 10	3 8 7
Lon. Elec. T. F. Corpn. 2½% 1950-55	FA	86½	2 17 10	3 11 6
COLONIAL SECURITIES				
Australia (Commonw'th) 4% 1955-70	JJ	99½	4 0 5	4 0 7
Australia (Commonw'th) 3% 1955-58	AO	86½	3 9 4	4 0 7
*Canada 4% 1953-58	MS	107	3 14 9	3 7 3
Natal 3% 1929-49	JJ	95½xd	3 2 10	3 11 10
New South Wales 3½% 1930-50	JJ	94xd	3 14 6	4 3 9
New Zealand 3% 1945	AO	92	3 5 3	4 11 0
Nigeria 4% 1963	AO	104	3 16 11	3 14 10
Queensland 3½% 1950-70	JJ	88xd	3 19 7	4 3 11
South Africa 3½% 1953-73	JD	97½	3 11 10	3 12 8
Victoria 3½% 1929-49	AO	93	3 15 3	4 7 7
CORPORATION STOCKS				
Birmingham 3% 1947 or after	JJ	77xd	3 17 11	—
Croydon 3% 1940-60	AO	90	3 6 8	3 13 9
*Essex County 3½% 1952-72	JD	99	3 10 8	3 11 0
Leeds 3% 1927 or after	JJ	79½	3 15 6	—
Liverpool 3½% Redeemable by agreement with holders or by purchase	JAJO	91xd	3 16 11	—
London County 2½% Consolidated Stock after 1920 at option of Corp.	MJSD	66½	3 15 2	—
London County 3% Consolidated Stock after 1920 at option of Corp.	MJSD	79	3 15 11	—
Manchester 3% 1941 or after	FA	78	3 16 11	—
Metropolitan Consd. 2½% 1920-49	MJSD	94	2 13 2	3 4 2
Metropolitan Water Board 3% "A" 1963-2003	AO	81½	3 13 7	3 15 2
Do. do. 3% "B" 1934-2003	MS	83	3 12 3	3 13 10
Do. do. 3% "E" 1953-73	JJ	92½	3 4 10	3 7 6
*Middlesex County Council 4% 1952-72	MN	103	3 17 8	3 14 1
* Do. do. 4½% 1950-70	MN	106	4 4 11	3 16 5
Nottingham 3% Irredeemable	MN	77	3 17 11	—
Sheffield Corp. 3½% 1968	JJ	99	3 10 8	3 11 0
ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS				
Gt. Western Rly. 4% Debenture	JJ	100	4 0 0	—
Gt. Western Rly. 4½% Debenture	JJ	104½	4 6 1	—
Gt. Western Rly. 5% Debenture	JJ	114½	4 7 4	—
Gt. Western Rly. 5% Rent Charge	FA	112½	4 8 11	—
Gt. Western Rly. 5% Cons. Guaranteed	MA	108½	4 12 2	—
Gt. Western Rly. 5% Preference	MA	90½	5 10 6	—
Southern Rly. 4% Debenture	JJ	97½xd	4 2 1	—
Southern Rly. 4% Red. Deb. 1962-67	JJ	101½xd	3 18 10	3 18 3
Southern Rly. 5% Guaranteed	MA	110	4 10 11	—
Southern Rly. 5% Preference	MA	99½	5 0 6	—

* Not available to Trustees over par.
‡ In the case of Stocks at a premium, the yield with redemption has been calculated at the earliest date; in the case of other Stocks, as at the latest date.